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Supreme Court of the United States

OCTOBER TERM, 1959

No. 31

JAMES B. CAREY, AS PRESIDENT OF THE INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO, PETITIONER,

vs.

WESTINGHOUSE ELECTRIC CORPORATION.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

PETITION FOR CERTIORARI FILED OCTOBER 4, 1958
CERTIORARI GRANTED APRIL 1, 1959

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 485

JAMES B. CAREY, AS PRESIDENT OF THE INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO, PETITIONER,

vs.

WESTINGHOUSE ELECTRIC CORPORATION.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

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[fol. A-1]

IN THE COURT OF APPEALS OF THE STATE OF NEW YORK

In the Matter

of

JAMES B. CAREY, as President of INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, A.F.L.-C.I.O., Petitioner-Respondent,

—against—

WESTINGHOUSE ELECTRIC CORPORATION, Respondent-Cross-Appellant.

STATEMENT

This is an appeal by James B. Carey, as President of International Union of Electrical, Radio and Machine Workers, A. F. L.-C. I. O., and a cross-appeal by Westinghouse Electric Corporation from an order of modification of the Appellate Division, First Department, filed in the office of its Clerk on December 14, 1961 and entered in the office of the Clerk of the County of New York on December 26, 1961, reversing in part and affirming in part a final order entered in this proceeding on April 18, 1961, in the office of the Clerk of the County of New York. The final order entered at Special Term dismissed in part and granted in part a petition to compel arbitration. The Appellate Division modified the final order by reversing a part thereof which granted relief to petitioner, by affirming a part thereof which denied relief to petitioner and by affirming a part thereof which granted relief to petitioner.

There has not been any change of parties or attorneys since the appeal to the Appellate Division.

[fol. 1]

IN THE SUPREME COURT OF THE STATE OF NEW YORK

APPELLATE DIVISION—FIRST DEPARTMENT

JAMES B. CAREY, as President of INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, A.F.L.-C.I.O., Petitioner-Appellant-Respondent,

against

WESTINGHOUSE ELECTRIC CORPORATION, Respondent-Respondent-Cross-Appellant.

STATEMENT UNDER RULE 234

This proceeding was brought to compel arbitration of certain grievances pursuant to the arbitration provisions of a collective bargaining agreement between the parties.

The proceeding was commenced June 9, 1960, in the Supreme Court, New York County, by service of petition and notice of motion. Respondent served its answer opposing the petition on October 11, 1960. Mr. Justice Owen McGivern, by an order made at Special Term of the Supreme Court, New York County, and entered April 17, 1961, granted the petition with reference to grievances known as National Appeal Grievances Nos. 1971-C, 2547-C and 2079-A and denied the petition with reference to the grievance known as National Appeal Grievance No. 2286-G. Petitioner served and filed a notice of appeal from said order on May 15, 1961. Respondent served and filed a notice of cross-appeal from said order on May 23, 1961.

The names of the original parties to this proceeding are set forth in the title. There has not been any change in the parties or attorneys.

[fol. 2]

IN SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

In the Matter of

JAMES B. CAREY, as President of INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, A.F.L.-C.I.O., Petitioner,

—against—

WESTINGHOUSE ELECTRIC CORPORATION, Respondent.

NOTICE OF APPEAL—May 15, 1961

Sirs:

Please take notice that the above named petitioner, James B. Carey, as President of International Union of Electrical, Radio and Machine Workers, A.F.L.-C.I.O., hereby appeals to the Appellate Division of the Supreme Court of the State of New York, in and for the First Judicial Department, from so much of the final order made in the above entitled proceedings, dated April 17, 1961 and entered in the Office of the Clerk of the County of New York on April 18, 1961, as denies that part of petitioner's motion for an order directing that arbitration proceed in the manner provided for in the arbitration agreement contained in the collective bargaining agreement between petitioner and [fol. 3] respondent of the unsettled grievance known as National Appeal Grievance, No. 2286-G.

Yours, etc.

Lieberman, Katz & Aronson, Attorneys for Petitioner, 1501 Broadway, New York 36, New York.

Dated: New York, New York, May 15, 1961.

To:

Clerk of the County of New York.

Cravath, Swaine & Moore, Esqs., Attorneys for Respondent, 15 Broad Street, New York, New York.

[fol. 5]

At a Special Term, Part I, of the Supreme Court of the State of New York, held in and for the County of New York, at the Court House thereof, Pearl and Centre Streets, Borough of Manhattan, City of New York, on the 17th day of April, 1961.

Present: Hon. Owen McGivern, Justice.

ORDER APPEALED FROM—April 17, 1961

The petitioner having moved this Court by notice of motion dated the 8th day of June, 1960, for an order directing that arbitration proceed, in the manner provided for in the arbitration agreement contained in the collective bargaining agreement between the parties, of the unsettled grievances known as National Appeal Grievances Numbers 1971-C, 2547-C, 2079-A and 2286-G, and that said order shall further provide that within ten days of the service of a copy of said order with notice of entry thereon, the parties shall proceed with the selection of an arbitrator and with arbitration in accordance with the Voluntary Arbitration Rules of the American Arbitration Association, except insofar as said Rules have been modified by the collective bar- [fol. 6] gaining agreement; and said motion having duly come on to be heard on the 11th day of October, 1960, and Lieberman, Katz & Aronson, attorneys for the petitioner, having appeared in support of said motion, and Cravath, Swaine & Moore, attorneys for respondent, having appeared in opposition thereto;

Now, on reading and filing the aforesaid notice of motion dated the 8th day of June, 1960, the petition of James B. Carey, verified the 6th day of June, 1960, and the reply affidavit of Ellis Hockenberry, sworn to the 23rd day of September, 1960, together with proof of service thereof, all submitted in support of said motion, and answer by respondent to the petition, verified by Albert R. Connelly on the 10th day of October, 1960, the affidavits of Clark C. Frame, sworn to the 7th day of July, 1960, G. M. Nicholson, sworn to the 29th day of June, 1960, W. W. Heimbach, sworn to the 8th day of July, 1960, K. H. Smith, sworn

to the 29th day of June, 1960, K. H. Smith, sworn to the 7th day of October, 1960, and John F. Hunt, Jr., sworn to the 10th day of October, 1960, all submitted in opposition thereto; and upon the decision of the Court filed herein,

It is now, on motion of Lieberman, Katz & Aronson, attorneys for petitioner,

Ordered, That the motion, insofar as it relates to the unsettled grievances known as National Appeal Grievances [fol. 7] Numbers 1971-C, 2547-C and 2079-A, be, and the same hereby is, in all respects granted; and it is further

Ordered, That the motion, insofar as it relates to the unsettled grievance known as National Appeal Grievance Number 2286-G, be, and the same hereby is, denied; and it is further

Ordered, That arbitration be had of the issues involved in the unsettled grievances known as National Appeal Grievances Numbers 1971-C, 2547-C and 2079-A, as requested by the Union, which have arisen under a collective bargaining agreement, and shall proceed between International Union of Electrical, Radio and Machine Workers, A.F.L.-C.I.O., petitioner Union, and Westinghouse Electric Corporation, respondent, in the way and manner set forth and provided for in the collective bargaining agreement referred to in the aforesaid petition, within ten (10) days from the date of service of a copy of this order with notice of entry thereon.

Enter

O. McG, J.S.C.

[File endorsement omitted]

[fol. 8]

In Supreme Court of the State of New York

County of New York

Notice of Motion—June 8, 1960

Sir:

Please take notice that upon the annexed petition of James B. Carey, dated the 6th day of June, 1960, and the

annexed exhibits and the proceedings herein, the undersigned will move this Honorable Court at a Special Term, Part I, thereof, to be held in and for the County of New York at the County Court House located at Pearl and Centre Streets, Borough of Manhattan, City and State of New York, on the 22nd day of June, 1960, at 10:00 o'clock in the forenoon of said day, or as soon thereafter as counsel can be heard, for an order directing that arbitration proceed, in the manner provided for in the arbitration agreement between the parties contained in the collective bargaining agreement between the parties, a copy of which is set forth in the petition annexed hereto, of the unsettled grievances known as National Appeal Grievances No. 2547-C; No. 2079-A; No. 2286-G and No. 1971-C; to interpret and apply the provisions of the National Agreement in connection with said unsettled grievances, and that the said order shall further provide that within ten days of the [fol. 9] service of a copy of said order with notice of entry thereof, the parties shall proceed with the selection of an arbitrator and with arbitration in accordance with the Voluntary Arbitration Rules of the American Arbitration Association, except insofar as said Rules have been modified by the collective bargaining agreement, and for such other and further relief as to this Court shall seem just and proper in the premises.

Dated: New York, N. Y., June 8th, 1960.

Yours, etc.

Lieberman, Katz & Aronson, Attorneys for Petitioner.

Benjamin C. Sigal, Esq., 1126 Sixteenth Street, N.W., Washington, D. C.

To:

Westinghouse Electric Corporation, Respondent, 40 Wall Street, New York, N. Y.

[fol. 10]

IN SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

PETITION OF JAMES B. CAREY, READ IN SUPPORT OF MOTION

To the Supreme Court of the State of New York, New York County:

The petition of James B. Carey, as President of International Union of Electrical, Radio and Machine Workers, A.F.L.-C.I.O., hereinafter referred to as "Union", respectfully shows:

1. Your petitioner is the President of the Union, which is an unincorporated labor organization consisting of many thousands of members, organized into duly chartered Locals in many states of the United States. The headquarters of the Union are located at 1126 16th Street, N. W., Washington, D. C.

2. Westinghouse Electric Corporation, respondent herein, hereinafter referred to as "Company", is a Pennsylvania corporation engaged in the manufacture of electrical products and appliances at its many plants located in many states of the United States, including New York, New Jersey, Pennsylvania, Ohio and Maryland. The Company maintains executive offices at 40 Wall Street, New York, New York, and at 3 Gateway Center, Pittsburgh, Pennsylvania.

[fol. 11] 3. The Union is collective bargaining agency for the employees of the Company at a number of its plants, including its plants in New York, New Jersey, Ohio, Pennsylvania and Maryland. On or about March 20, 1956, the Union entered into a collective bargaining agreement, hereinafter called "National Agreement", with the Company which runs until October 15, 1960. The National Agreement sets forth provisions governing wages, hours and conditions of employment of the employees at various plants of the Company, including the plants located in Metuchin, New Jersey, East Pittsburgh, Pennsylvania,

Baltimore, Maryland, and Mansfield, Ohio. A true and correct copy of the National Agreement as modified will be handed up to the Court on the argument.

4. Said National Agreement contains the following section relating to arbitration, as follows:

"SECTION XIV-A ARBITRATION

"A. Except as otherwise provided in this Agreement, any grievance involving action taken or failure to act subsequent to the effective date of Supplement VII to this Agreement which remains unsettled after the grievance procedure has been exhausted pursuant to Section XIV and which involves either

"(1) The interpretation, application or claimed violation of a provision of this Agreement or of a [fol. 12] local supplement in effect in the bargaining unit in which the grievance arose, or

"(2) a disciplinary penalty, release or discharge which is alleged to have been imposed without just cause,

shall be submitted to arbitration upon the written request of either the Union or the Company. Such request shall be made within thirty (30) days after the Company receives notice that its final reply at the national appeal level is unsatisfactory. If no request for arbitration is made by either the Company or the Union during such thirty (30) days period, both parties shall be deemed to have waived to have waived [sic] their right to make such request. For the purpose of proceedings within the scope of (2) above, the standard to be applied by an arbitrator to cases involving disciplinary penalties, releases or discharges is that they shall be imposed only for just cause.

"B. (1) Within fifteen (15) days after receipt of a request for arbitration by the Company or the Union, representatives of the parties shall attempt to reach mutual agreement on the arbitrator. If the parties

fail to reach such mutual agreement on the arbitrator within the 15-day period, either party may, within [fol. 13] ten (10) days thereafter, request the American Arbitration Association to submit a list of names from the Association's Panels, from which an arbitrator may be chosen.

"(2) The parties shall also attempt to reach agreement on the question to be arbitrated. If agreement is reached, either party may withdraw from the agreement at any time thereafter until the hearing is closed if it believes the statement does not properly cover the matters at issue. Such withdrawal shall not prejudice the withdrawing party in any respect.

"C. In the selection of an arbitrator and the conduct of any arbitration proceeding, the Voluntary Labor Arbitration Rules of the American Arbitration Association, as amended and in effect March 1, 1952, (and which have remained in effect until the effective date of this Section) shall control, except that:

"(1) No arbitrator shall be appointed by the Association who has not been approved by both parties unless and until the parties have had submitted to them three lists of arbitrators from the Association's Panels, and have been unable to select a mutually satisfactory arbitrator therefrom;

[fol. 14] "(2) Either party may be represented by counsel at any hearing without prior notification to the other party or to the Association;

"(3) No modification of such Rules of the Association shall be controlling in any arbitration proceeding under this Agreement without mutual agreement in writing by the Company and the Union, except that both parties will comply with modifications to the extent that they involve the amount of the administrative fees of the Association;

"(4) The arbitrator shall have no authority to issue any subpoena or other form of legal process or award to compel either party to produce new evi-

dence (not already presented during processing of the grievance in the grievance procedure) considered by such party to be confidential or not relevant or material to the proceeding, or which is not available. This shall not limit the arbitrator's authority to compel the production of information which this Agreement or a local supplement requires either party to provide the other;

"(5) The American Arbitration Association shall have no authority to process a request for arbitration or appoint an arbitrator if either party shall [fol: 15] advise the Association that the grievance desired to be arbitrated does not, in its opinion, raise an arbitrable issue. In such event, the Association shall have authority to process the request for arbitration and appoint an arbitrator in accordance with this Agreement and the above-mentioned Rules only after a final judgment of a Court has determined that the grievance upon which the arbitration has been requested raises an arbitrable issue or issues. The foregoing part of this Paragraph 5 shall not be applicable if by its terms the request for arbitration requests only relief from a disciplinary penalty, release or discharge alleged to have been imposed without just cause.

"D. Notwithstanding any other provision of this Agreement, no arbitrator shall, without specific written agreement of the Company and the Union with respect to the arbitration proceeding before him, be authorized to:

"(1) Add to, detract from or in any way alter the provisions of this Agreement, or any Supplement or local supplement to this Agreement;

"(2) Establish or modify any wage or salary rate, job classification or classification of any employe ex- [fol. 16] cept as provided in Section VIII, Paragraphs 9.D., and 9.E., or any time value under the incentive system;

"(3) Make any award with respect to the release of any new employe during his or her probationary period;

"(4) Make any award involving any matter relating to any pension and/or insurance agreement between the parties, any pension or insurance plan referred to or made a part of any such agreement, or the establishment, change, interpretation, application or administration of any pension or insurance plan;

"(5) Make any award requiring payment of any employe for any period more than thirty (30) days preceding the filing of the grievance.

"E. If the arbitration proceeding concerns a seniority grievance from a plant in which there is no local supplement on seniority at the time the action in question was taken, the arbitrator shall consider the provisions of this agreement together with the seniority practices existent in the bargaining unit at the time the action in question was taken which are not in conflict with this Agreement.

"F. The award of an arbitrator shall be in writing and shall be final and binding upon the parties to this [fol. 17] Agreement, the employe or employes involved in the grievance, and the Local representing the bargaining unit in which the grievance arose.

"G. The following procedures (not covered by the Rules of the American Arbitration Association referred to in Paragraph C of this Section) are hereby agreed upon as follows:

"(1) A copy of any document furnished to the arbitrator by either party shall also be furnished simultaneously to the other party. If no copy of a document furnished at the hearing is available, a copy will be prepared and furnished to the other party as soon as practicable.

"(2) In the event the arbitrator requests the parties to supply him with a stenographic record of the

arbitration proceeding the parties shall equally divide the cost of one copy for him.

"(3) Unless otherwise agreed upon, an arbitration proceeding hereunder shall include only grievances arising from the same plant or identical grievances arising from two or more plants. When an arbitration proceeding includes several grievances arising from the same plant, any identical grievances arising from another plant or plants may also be included."

[fol. 18] 5. After the making of the National Agreement, certain grievances, hereinafter more fully described, arose and were processed by the parties pursuant to the grievance procedure set forth in the collective bargaining agreement. The grievances were not settled, and the Union demanded arbitration with respect to each of them, which demand for arbitration the Company refused on the ground that each grievance, in its opinion, was not arbitrable. Said grievances were marked and known to parties as:

"National Appeal Grievance No. 2547-C" (Local 401, Metuchen, New Jersey)

"National Appeal Grievance No. 2079-A" (Local 601, East Pittsburgh, Pennsylvania)

"National Appeal Grievance No. 2286-G" (Local 130, Baltimore, Maryland)

"National Appeal Grievance No. 1971-C" (Local 711, Mansfield, Ohio)

* * * * * * *

[fol. 24] *National Appeal Grievance 2286-G* (Local 130, Baltimore, Maryland)

17. On or about March 5, 1958, the Union presented a grievance to the Company protesting the refusal of the Company to apply the National Agreement and the related Supplement to its production and maintenance employees at its Baltimore, Maryland, plant engaged in the manufacture of induction heating products, which work consists of assembly, wiring, power brake, machining and related operations in the tool crib and store room at the Company's

plant at 2579 Wilkins Avenue, Baltimore, Maryland. The Union contends that the work involved is production and maintenance work.

[fol. 25] Section I, Paragraph 1., of the National Agreement provides:

> "1. The Company agrees to recognize the Union, on behalf of and in conjunction with its Locals, for those units where the Union or its Locals, through a lawful National Labor Relations Board certification, have been lawfully designated as the exclusive bargaining representative for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment. The units and Locals referred to in the preceding sentence are set forth in the Appendix attached hereto and made a part of this agreement." (Pages 1 and 2 of the National Agreement)

The Appendix to the National Agreement (page 90 of the National Agreement) provides as follows:

> "APPENDIX
>
> "UNITS FOR WHICH THE UNION OR ITS LOCALS HAVE BEEN CERTIFIED ON THE DATE OF THIS AGREEMENT. AS USED HEREIN, THE TERM "UNION" MEANS THE INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, A.F.L.-C.I.O. AND THE TERM "LOCAL" MEANS A LOCAL OF THE UNION.
>
> [fol. 26] "ITEM 1
>
> "UNIT: All production and maintenance employees of the Employer at its Baltimore Works located at 2519 Wilkens Avenue and 3601 Washington Boulevard, Baltimore, Maryland, including group leaders, and shop clerical employees, but excluding all salaried technical, office and office clerical employees, salaried time study clerks, clerical employees in the production planning department, guards, professional employees, and supervisors as defined in the Act."

18. The grievance was processed through all steps of the grievance procedure as provided in Section XIV of the National Agreement. On or about August 19, 1958, the Company notified the Union of its final decision denying the grievance.

19. The unsettled grievance involves the interpretation of Section I; Section VI-A, subsection (b); Section XII; and Item 2 of the National Agreement. On or about September 4, 1958, the Union notified the Company of its dissatisfaction with the Company's answer to the grievance and the Union's desire to process the issue to arbitration. On or about September 15, 1958, the Company acted through its duly authorized representative, R. G. Pumphrey, Arbitration Representative, Labor Relations, and notified the Union that the Company did not believe the [fol. 27] question was subject to arbitration under the National Agreement. A true and correct copy of this letter is attached hereto, marked Exhibit 5, and made a part hereof.

20. On or about September 17, 1958, the Union requested the Arbitration Association to process the grievance in arbitration. On or about September 22, 1958, the Company sent a letter to the Association advising it that the Company did not believe the issue should be arbitrated. A true and correct copy of the Company's letter is attached hereto, marked Exhibit 6, and made a part hereof. By virtue of the fact it had sent such notice to the Association, the Company prevented the said Association from proceeding to process the Union's request for arbitration. The Association so notified the Union to that effect by letter dated September 26, 1958. A true and correct copy of this notice is attached hereto, marked Exhibit 7, and made a part hereof.

21. Petitioner alleges that this grievance involves interpretation and application of contractual provisions which require the Company to recognize the Union as the collective bargaining agent of all employees doing bargaining unit work, and that the National Agreement must be applied to all employees performing bargaining unit work.

• • • • • • •

[fol. 30] 27. Petitioner has been advised by counsel, and therefore avers, that in cases such as these the Court does not consider the merits of the controversy or dispute between the parties, but merely determines whether or not a bona fide dispute exists which should be resolved by the arbitrator in accordance with the National Agreement. Your petitioner, therefore, does not request the Court to decide which interpretations of the agreement are the correct ones, but does respectfully request the Court to decide that the issues involved in the foregoing grievances are arbitrable, and that the issues of interpretation, application and claimed violations of the agreement should be resolved by the arbitrator.

28. The issues in these grievances are of the utmost importance to thousands of employees in the many plants of the Company throughout the nation and are of great concern to them. There is great need that these disputes be resolved by arbitration so that industrial self-government may proceed in orderly fashion through arbitration according to the National Agreement.

[fol. 31] 29. With respect to each of the foregoing unsettled grievances, the Respondent has prevented arbitration by notifying the American Arbitration Association that, in its opinion, the grievance does not raise an arbitrable issue. Under the terms of the arbitration agreement, the American Arbitration Association has no authority to process the requests for arbitration unless this Court shall determine that the grievances raise an arbitrable issue or issues. Petitioner alleges that each grievance is arbitrable under the terms of the agreement since each grievance involves the interpretation, application or claimed violation of the National Agreement or of the Local Supplement.

30. No previous application has been made for the order or relief sought herein.

Wherefore, your Petitioner prays for an order directing that arbitration proceed in the manner provided for in the arbitration agreement in connection with the grievances known as National Appeal Grievances Nos. 2547-C; 2079-A; 2286-G; 1971-C; to interpret and apply the several provi-

sions of the collective bargaining agreement to said gri
ances; that said order further provide that the part
shall proceed to arbitration in the manner set forth in
arbitration agreement within ten (10) days of the serv
of a copy of the said order with notice of entry there
and for such other and further relief as to this Court sh
seem just and proper.

(Verified by James B. Carey on June 6, 1960.)

[fol. 40]

EXHIBIT 5 TO PETITION OF JAMES B. CAREY

WESTINGHOUSE
ELECTRIC CORPORATION
3 GATEWAY CENTER
P. O. BOX 2278
PITTSBURGH 30, PA.

September 15, 1958

Mr. Robert Nellis, Chairman
Westinghouse Conference Board
IUE—AFL-CIO
208 Shields Building
822 Wood Street
Pittsburgh 21, Pennsylvania

re: Appeal Grievance 2286-G
Local Grievance 1055
Local 130—Baltimore, Maryland

Dear Sir:

Reference is made to your letter dated September 4, 1958
in which you request that the above-identified grievance be
processed into arbitration. It is noted that this grievance
is a complaint from your Union alleging that certain em-
ployes in the Engineering Laboratory of the Industrial
Electronics Department should be represented by the IUE
rather than their present bargaining agent. This is a rep-
resentation matter which normally is aired before the Labor
Board. Obviously, it is not a matter contemplated by the

[fol. 41] arbitration provisions of our National Agreement and the Company is unable to comply with your request in this regard.

Yours truly,

R. G. Pumphrey
Arbitration Representative
Labor Relations

ep
cc: Mr. Ellis Hockenberry

[fol. 42]

EXHIBIT 6 TO PETITION OF JAMES B. CAREY

WESTINGHOUSE
ELECTRIC CORPORATION
3 GATEWAY CENTER
P. O. BOX 2278
PITTSBURGH 30, PA.

September 22, 1958

Mr. Herbert Schmertz
Regional Manager
American Arbitration Association
477 Madison Avenue
New York 22, N. Y.

Re: IUE—AFL-CIO, Local 130

—and—

Westinghouse Electric Corporation
Appeal Grievance No. 2286-G

Dear Sir:

Reference is made to a letter dated September 17, 1958, addressed to you by Mr. Ellis Hockenberry, of the IUE, in which he requested that the above identified grievance be processed into arbitration. A copy of this letter was sent to me and it indicates that the Union has furnished you with a copy of my letter dated September 15, 1958, in which the Union was told that in the opinion of the Company this

grievance does not raise an arbitrable issue under the future disputes clause of the labor agreement.

[fol. 43] In view of the above, the Company directs your attention to Paragraph C-5, Section XIV-A (Arbitration) of the Agreement existing between the parties whereby the Association is estopped from processing this arbitration request until after a final judgment of a court has determined that the grievance upon which the arbitration has been requested raises an arbitrable issue.

Yours truly,

R. G. Pumphrey
Arbitration Representative
Labor Relations

ep
cc: Mr. Ellis Hockenberry

[fol. 44]

EXHIBIT 7 TO PETITION OF JAMES B. CAREY

AMERICAN ARBITRATION ASSOCIATION
477 MADISON AVENUE, NEW YORK 22, N. Y.
Telephone Plaza 9-7900

In re:

IUE, AFL-CIO, Local 130

—and—

Westinghouse Electric Corporation
Re: National Appeal Grievance #2286-G

IUE, Radio & Machine Workers, AFL-CIO
Local 130
Attn: Mr. Ellis Hockenberry, Secretary
National Westinghouse Conference Board
208-11 Shields Building
822 Wood Street
Pittsburgh 21, Pa.

September 26, 1958

Westinghouse Electric Corporation
Attn: Mr. R. G. Pumphrey
Arbitration Representative, Labor Relations
3 Gateway Center
P.O. Box 2278
Pittsburgh 30, Pa.

Gentlemen:

This will acknowledge receipt of a letter dated September 17, 1958 with enclosures from Mr. Ellis Hockenberry, Sec- [fol. 45] retary of the Union, in which he informs us of their desire to process the above grievance to arbitration. Accompanied with this is a copy of a letter to the Union from the Company indicating their refusal to arbitrate this dispute.

This will acknowledge receipt of a letter dated September 22, 1958 from Mr. R. G. Pumphrey, Arbitration Representative of the Company, in which he informs us that in the Company's view the above grievance does not raise an arbitrable issue.

Therefore, in accordance with the above and Section XIV, A, C(5) of the Contract between the parties, we will not proceed until the issue of arbitrability is determined by an appropriate court or arbitration is directed in accordance with the provisions of said section.

Very truly yours,

Herbert Schmertz
Tribunal Clerk

HS:ge.

[fol. 53]

IN SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

ANSWER TO PETITION—October 10, 1960

Respondent, for its answer to the Petition herein, on information and belief:

1. Denies each and every allegation of the first and third sentences of paragraph 3 except that (i) Petitioner is the collective bargaining agency for certain of the employees of Respondent at a number of its plants, including its plants in New York, New Jersey, Ohio, Pennsylvania and Maryland and (ii) the National Agreement between Petitioner and Respondent sets forth provisions governing wages, hours and conditions of employment of certain of the employees at various plants of Respondent, including the plants located in Metuchen, New Jersey, East Pittsburgh, Pennsylvania, Baltimore, Maryland, and Mansfield, Ohio.

* * * * * * *

[fol. 54] 6. Denies each and every allegation of the first sentence of paragraph 17 except that on or about March 5, 1958, the Union presented a grievance to the Company claiming that Engineering Laboratory employees of the Company at its plant at 2579 Wilkins Avenue, Baltimore, Maryland, who were performing assembly, wiring, power [fol. 55] brake and machining operations and attending to the Engineering Laboratory tool crib and storeroom should be in the bargaining unit represented by Local 1305 Union.

7. Denies each and every allegation of the first sentence of paragraph 19.

8. With respect to the allegations of paragraph 21, denies that National Appeal Grievance No. 2286-G (Local 130, Baltimore, Maryland) involves interpretation and application of contractual provisions which require Respondent to recognize Petitioner as the collective bargaining agent of all employees doing bargaining unit work and that the

National Agreement must be applied to all employees performing bargaining unit work.

• • • • • • •

[fol. 56] 11. Denies each and every allegation of paragraph 28.

12. Denies the allegations of the third sentence of paragraph 29.

Respondent, for an affirmative defense to the Petition in so far as it seeks to compel Respondent to submit National Appeal Grievance No. 1971-C (Local 711, Mansfield, Ohio) to arbitration:

• • • • • • • •

Respondent, for an affirmative defense to the Petition in so far as it seeks to compel Respondent to submit [fol. 57] National Appeal Grievance No. 2286-G (Local 130, Baltimore, Maryland):

15. Alleges that the industrial operations from which said Grievance arose affect commerce and that the National Labor Relations Board has exclusive jurisdiction over the subject matter of said Grievance.

Wherefore, Respondent demands that an order be entered dismissing the Petition in all respects and directing Petitioner to pay Respondent its costs and disbursements in this proceeding.

Cravath, Swaine & Moore, Attorneys for Respondent.

Dated: October 10, 1960.

(Verified by Albert R. Connelly on October 10, 1961.)

[fol. 58]

IN SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

AFFIDAVIT OF CLARK C. FRAME, READ IN OPPOSITION TO MOTION

State of Pennsylvania,
County of Allegheny, ss.:

Clark C. Frame, being duly sworn, deposes and says:

1. I am Director of Labor Relations for Westinghouse Electric Corporation (hereinafter called the Company). This affidavit is submitted in opposition to the petition of James B. Carey (hereinafter called the Petition), as President of International Union of Electrical, Radio and Machine Workers, A.F.L.-C.I.O. (hereinafter called the Union). The Petition refers to four disputes between the Union and the Company arising at various of the Company's plants and processed through the grievance procedures provided for by Section XIV ("Settlement of Disputes") of the collective bargaining agreement between the Company and the Union entered into on October 1, 1950, as modified by Supplements I through VIII, executed at various times between October 1, 1950 and October 31, 1957 (hereinafter called the National Agreement).

[fol. 59] 2. The National Agreement, both before and after Supplement VII executed March 20, 1956, provided certain machinery for the resolution of disputes between the Company and the Union as set forth in Section XIV. That Section provides that the Union may institute a "grievance" with respect to any "problem concerning rates of pay, wages, hours of employment, or any other condition of employment . . . " (p. 37 of the National Agreement). Grievance procedures begin at the level of conferences between the shop steward and foreman involved and may be processed through successive echelons of the Union and the Company to the so-called National Appeal level. As noted, the permissible subject matter of a grievance (any *problem*) is extremely broad. Section VI ("Strikes, Stoppages

and Lockouts") of the National Agreement provides (in Subsection A) that the Union will not cause or officially sanction any strike on the part of the employes with respect to a dispute which is subject to the grievance procedures of Section XIV until those procedures have been exhausted.

3. On March 20, 1956, Section XIV-A, containing a limited consent by the Company to arbitration of certain types of unsettled grievances, was added to the National Agreement. Out of the broad possible subject matters of grievances cognizable under Section XIV, Section XIV-A provides an advance consent to arbitration of grievances involving either

> [fol. 60] "(1) The interpretation, application or claimed violation of a provision of this Agreement or of a local supplement in effect in the bargaining unit in which the grievance arose, or
>
> "(2) a disciplinary penalty, release or discharge which is alleged to have been imposed without just cause, . . ." (XIV-A.A).

Even this limited consent of the Company to arbitration is qualified as follows:

> "D. Notwithstanding any other provisions of this Agreement, no arbitrator shall, without specific written agreement of the Company and the Union with respect to the arbitration proceeding before him, be authorized to:
>
> "(1) Add to, detract from, or in any way alter the provisions of this Agreement or any Supplement or local supplement to this Agreement;
>
> "(2) Establish or modify any wage or salary rate, job classification or classification of any employe except as provided in Section VIII, Paragraphs 9.D. and 9.E., or any time value under the incentive system;
>
> "(3) Make any award with respect to the release of any new employe during his or her probationary period;

[fol. 61] "(4) Make any award involving any matter relating to any pension and/or insurance agreement between the parties, any pension or insurance plan referred to or made a part of any such agreement, or the establishment, change, interpretation, application or administration of any pension or insurance plan;

"(5) Make any award requiring payment to any employe for any period more than thirty (30) days preceding the filing of the grievance." (XIV-A.D)

If the Company and the Union mutually desire to submit a particular grievance (whether or not arbitrable under Section XIV-A) to an arbitrator, machinery for such jointly consented to arbitration is provided by Section XIV.B4.

4. Upon the addition to the National Agreement of the Company's limited advance consent to arbitration, Section VI of that Agreement was also modified (by the addition of subsection B) to enlarge slightly the Union's limited "no strike" obligation to include an obligation not to strike with respect to such unsettled grievances as are subject to arbitration under the new Section XIV-A. Section VI B also provides that, should the Company question the arbitrability of any grievance under Section XIV-A, the Union shall retain its full rights to strike in support of the [fol. 62] grievance (subject to certain notice provisions not material here). Thus, the obligation of the Company to submit to arbitration and the obligation of the Union not to strike are co-extensive and, in this respect, the National Agreement differs from that type of collective bargaining agreement in which a union has unconditionally obligated itself not to strike in exchange for an obligation of a company to submit unresolved disputes of a certain nature to arbitration. Under the National Agreement, when the Company questions the arbitrability of a grievance, the Union is freed of its "no strike" obligation whether or not it should later be determined that the grievance is arbitrable.

5. I am advised, and therefore aver, that there is no provision of either Federal or state law which provides for the compulsory arbitration of disputes between the Company and the Union and that the Company cannot be compelled to submit to an arbitrator any dispute between it and the Union unless it has consented to do so. By plain language and clear intendment, the Company has limited its consent to arbitrate grievances to those types of grievances described in Section XIV-A of the National Agreement and subject to the provisos contained in that Section. The Company has not consented to the arbitration of any grievance involving:

(i) a request by the Union for the alteration of any provision of the National Agreement (such as National [fol. 63] Appeal Grievance No. 2574-C arising from the Company's Metuchen, New Jersey plant and more fully described in the affidavit of G. M. Nicholson submitted herewith);

(ii) a request by the Union for the modification of a time value under the Company's incentive pay system (such as National Appeal Grievance No. 2079-A arising from the Company's East Pittsburgh, Pennsylvania plant and more fully described in the affidavit of W. W. Heimbach submitted herewith);

(iii) a request by the Union for the resolution of a dispute which is within the exclusive jurisdiction of the National Labor Relations Board (such as National Appeal Grievance No. 2286-G arising from the Company's Baltimore, Maryland plant and more fully described in the affidavit of K. H. Smith submitted herewith);

(iv) except with respect to the observance of accumulated seniority of former employes when increasing the work force, a challenge by the Union to any action or inaction of the Company with respect to employing or re-employing any person (such as National Appeal Grievance No. 1971-C arising from the Company's Mansfield, Ohio plant and more fully described in the affidavit of G. M. Nicholson submitted herewith).

[fol. 64] 6. It is respectfully submitted that, on the basis of the foregoing and of the affidavits of G. M. Nicholson, W. W. Heimbach and K. H. Smith submitted herewith, the Petition should be dismissed in all respects.

(Sworn to by Clark C. Frame on July 7, 1960.)

[fol. 65]

IN SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

AFFIDAVIT OF K. H. SMITH, READ IN OPPOSITION TO MOTION —June 29, 1960

State of New York,
County of New York, ss.:

K. H. SMITH, being duly sworn, deposes and says:

1. I am an Assistant Director of Labor Relations for Westinghouse Electric Corporation (hereinafter called the Company) and my duties include responsibility for union relations in the Company's General Products Group, which Group includes the Company's X-Ray and Industrial Electronics Equipment operations in Baltimore, Maryland. As part of my duties, I have investigated the grievance referred to in the petition of James B. Carey (hereinafter called the Petition), as President of International Union of Electrical, Radio and Machine Workers, A.F.L.-C.I.O. (hereinafter called the Union), which arose in the Company's Wilkens Avenue plant in Baltimore, *viz.*, National Appeal Grievance No. 2286-G (Local 130, Baltimore, Maryland) (hereinafter called the Certification Grievance). This [fol. 66] affidavit is submitted in opposition to the Petition in so far as it seeks an order to compel the Company to proceed to arbitration of the Certification Grievance.

2. Since long prior to 1955, the Company has conducted X-ray and industrial electronics operations at its plant at Wilkens Avenue, Baltimore. Such operations include, in addition to the *production* of X-ray and industrial electronics equipment, an engineering laboratory in which ex-

perimental and pilot equipment is developed, models of such equipment are constructed and certain pieces of equipment are individually built to the particular specifications of customers. Naturally, such construction requires the work of expert machinists, power brake operators, etc.—salaried technical employes who perform types of jobs which also occur in production operations. Pursuant to determinations of the National Labor Relations Board (hereinafter called NLRB), with respect to appropriate employe units for collective bargaining purposes at the Wilkens Avenue plant.

(i) all employes whose work was *for the purpose of producing* X-ray and industrial electronics equipment or for the purpose of plant and equipment maintenance (unless they were salaried technical, office and office-clerical employes, salaried time study clerks, clerical employes in the production planning department, guards, professional employes and supervisors) were [fol. 67] grouped into one unit for purposes of collective bargaining with the Company (hereinafter called the Production and Maintenance Unit); and

(ii) all salaried technical, clerical and professional employes whose work was *not for the purpose of production* and maintenance (plus other categories of employes not relevant here) were grouped into another unit for purposes of collective bargaining with the Company (hereinafter called the Salaried Unit).

3. Thereafter, pursuant to Federal law and under the supervision of NLRB, separate elections were held among employes in the Production and Maintenance Unit and in the Salaried Unit in order that the members of each such group of employes might exercise their rights under Federal law freely to choose the labor organization which they wished to represent them for purposes of collective bargaining with the Company. As a result of such elections, employes in the Production and Maintenance Unit (mostly hourly-paid) chose a labor organization predecessor to the Union as their collective bargaining representative and employes in the Salaried Unit chose the Association of West-

inghouse Salaried Employes, X-Ray and Industrial Electronics Division, an affiliate of the Federation of Westinghouse Industrial Salaried Unions (hereinafter called the Federation), as their bargaining representative.

[fol. 68] 4. Subsequently, the Company, temporarily requiring an addition to its floor space at Wilkens Avenue, took floor space at a location on Eagle Street in Baltimore, a few blocks away. To that Eagle Street annex were transferred certain production and maintenance operations and the Engineering Laboratory. The labor organization predecessor to the Union continued to represent those production and maintenance employees who were assigned to work at the Eagle Street annex and the Federation continued to represent the Engineering Laboratory employes after the temporary relocation of the Engineering Laboratory at that annex.

5. In 1955, the Union, seeking status as a collective bargaining representative of employes of the Company at its Wilkens Avenue plant and its Eagle Street annex, petitioned NLRB for a determination of an appropriate unit of employes for purposes of collective bargaining representation and the Board once again determined that all production and maintenance employes (except salaried technical, office and office-clerical, salaried time study clerks, clerical employes in the production planning department, guards, professional employes and supervisors) constituted an appropriate unit for purposes of collective bargaining with the Company. Following that NLRB reaffirmance of the Production and Maintenance Unit, an election was held in which employes in that Unit determined that the [fol. 69] Union was the labor organization which they wished to represent them for purposes of collective bargaining with the Company. As a preliminary to that election, election notices were published which described the employes eligible to vote in the election and that description did not include the Engineering Laboratory employes then at the Eagle Street annex and now the subject of the Certification Grievance. The Union did not protest the description contained in the election notice and, needless to say, the Engineering Laboratory employes did not vote

in the election. Thus, the only collective bargaining representative which the Engineering Laboratory employes have ever chosen to represent them in dealings with the Company is the Federation.

6. Following the 1955 election and prior to the institution by the Union of the Certification Grievance, the Company's floor space problems at Wilkens Avenue were alleviated and the operations which had temporarily been located at the Eagle Street annex were returned to Wilkens Avenue. Thereafter, the Union continued to represent all employes in the Production and Maintenance Unit (including those who had been temporarily transferred to Eagle Street) and the Federation continued to represent employes in the Salaried Unit including the Engineering Laboratory employes.

7. On March 5, 1958, the Union instituted a grievance claiming that those employes in the Engineering Laboratory [fol. 70] who were performing assembly, wiring, power brake and machining operations and attending the tool crib and the supply room should be in the Production and Maintenance Unit. Those employes were and are in the Salaried Unit, most of them are dues-paying members of the Federation and none of them has had an opportunity to vote in a Production and Maintenance Unit election as to whether he wishes the Union to be his collective bargaining representative. The Union's grievance was filed under the provisions of Section XIV of the collective bargaining agreement between the Company and the Union, effective October 1, 1950, as modified by Supplements I-VIII (hereinafter called the National Agreement), which permits the filing of a grievance with respect to any "problem concerning . . . conditions of employment." At no point in the various grievance steps provided by Section XIV did the Union claim that the grievance involved the "interpretation, application or claimed violation of a provision of" the National Agreement. At all steps in those grievance procedures, the Company pointed out to the Union that it was raising an issue as to the appropriate unit for collective bargaining purposes—an issue over which the jurisdiction of NLRB was exclusive and plenary. On September 17, 1958, the

Company having finally rejected the Certification Grievance, the Union requested that it be submitted to arbitration (although even that request did not assert that the [fol. 71] Certification Grievance involved the interpretation, application or claimed violation of the National Agreement, nor did it refer to any provision of the National Agreement which it claimed had been violated or which required interpretation or application). The Company, having advised the Union that the Certification Grievance was not arbitrable under Section XIV-A of the National Agreement (but "a representation matter which normally is aired before the Labor Board"), the American Arbitration Association, on September 26, 1958, declined to proceed with the arbitration requested by the Union. One year and eight months later, the Union brought the instant Petition, seeking an order of the Court compelling the Company to submit the Certification Grievance to arbitration.

8. The Federation has a collective bargaining agreement with the Company, effective November 1, 1950, as modified by Supplements I-XIII, which contains the following provisions, among others:

(i) By Section I the "Company recognizes the Federation . . . for those units where the Federation . . . through a National Labor Relations Board certification has been lawfully designated as the exclusive bargaining agent. The units for which the Federation [has] . . . been certified and which are included within this Agreement are set forth in the Appendix attached hereto and made a part of this Agreement."

[fol. 72] (ii) The Appendix describes, in Item 2, as one of the units "for which the Federation [has] been certified and which are covered by this Agreement"—"All salaried, technical, office and office clerical employees of Westinghouse Electric Corporation (Industrial Electronics and X-Ray Div.), Baltimore, Md. . . . but excluding . . . all production and maintenance . . . employees".

(iii) Section XV-A ("Arbitration") provides the advance consent of the Company to arbitration and arbi-

tration procedures identical in all material respects with the provisions of Section XIV-A of the National Agreement between the Company and the Union.

Thus, if the Company were to treat the employes who are the subject of the Certification Grievance as covered by the National Agreement, it is clear that the Federation could make out the same case for compulsory arbitration of a fully analogous claim of contractual violation as the Union has made out in its Petition. If the Union has the right to compel the Company to arbitrate the Certification Grievance, the Federation would have a right to compel the Company to arbitrate the contrary proposition. If the arbitrator now sought by the Union were to find that the Engineering Laboratory employes who are the subject of the Grievance should be in the Production and Maintenance Unit as defined by Item 1 of the National Agreement, the arbitrator in the Federation proceeding could enter an award to the effect that those employes should be in the Salaried Unit as defined in Item 2 of the collective bargaining agreement between the Company and the Federation. The Company then would be faced with two conflicting arbitration awards placing it on the horns of a dilemma with respect to a controversy between the Union and the Federation as to which the Company is, and by Federal law must be, completely neutral.

[fol. 73]

9. On information and belief, the Engineering Laboratory employes over which the Union seeks to gain control in the Certification Grievance do not wish to be represented by the Union and prefer to be represented by the Federation. Should the Court compel arbitration of the Certification Grievance and should the Union be successful in that arbitration, it is apparent that there would be serious industrial discord among the Engineering Laboratory employes at the Company's Wilkens Avenue plant. If the status quo with respect to Union representation at Wilkens Avenue (as previously determined by NLRB and the free ballots of the Company's employes there) were in "great need" of arbitration, as the Petition (p. 14) erroneously alleges, it is apparent that the Union would have

sought relief from NLRB, rather than waiting twenty [fol. 74] months between the Company's denial of arbitrability of the Certification Grievance and the filing of the Petition.

10. I am advised, and therefore aver, that, under Federal law, NLRB has exclusive jurisdiction over the dispute underlying the Certification Grievance, that the appropriate remedy of the Union with respect to that dispute is to petition NLRB for a redetermination of appropriate bargaining units at the Company's Wilkens Avenue plant and that, should this Grievance be forced into arbitration, the award of the arbitrator would be completely ineffective to alter the bargaining units determined by the NLRB or to be determined by that Federal agency at any time in the future.

11. The Company has not consented to the arbitration of the Certification Grievance because

(i) prior to the filing of the Petition, the Grievance was never asserted by the Union to involve the interpretation, application or claimed violation of the National Agreement (specified as a condition to the Company's consent to arbitration in Section XIV-A-A(1)); and

(ii) nowhere in Section XIV-A of the National Agreement has the Company consented to the arbitration of a dispute which is in the exclusive jurisdiction of the NLRB (and, I am advised and therefore aver, that, if such a consent had been given, it would have been completely ineffective to confer jurisdiction on the arbi- [fol. 75] trator or to confer jurisdiction on a court to compel arbitration).

12. It would be inequitable for the Court to compel arbitration of the Certification Grievance under the National Agreement because

(i) the underlying dispute is one between the Union and the Federation as which the Company is in the status of an innocent by-stander;

(ii) the party to the dispute genuinely adverse to the Union, the Federation, would not be a party to that arbitration;

(iii) the Federation could obtain arbitration of the same subject matter as a result of which the Company might be faced with two conflicting arbitration awards; and

(iv) the Union has no need for the relief it here seeks since it has been, is now and will continue to be free to present the subject matter of the Grievance to NLRB for adjudication.

13. I am advised and therefore aver that it would be illegal and contrary to Federal labor policy for the Court to compel arbitration of the Certification Grievance because

(i) the subject matter of the Grievance is within the exclusive jurisdiction of NLRB; and

(ii) compelling the Company to submit to arbitration of the Grievance would, rather than allaying in- [fol. 76] dustrial discord (nonexistent at this time), foment such discord among the Company's Engineering Laboratory employes.

14. It is respectfully submitted that the Petition in so far as it seeks an order compelling the Company to submit the Certification Grievance to an arbitrator, should be dismissed.

June 29, 1960.

(Sworn to by K. H. Smith on June 29, 1960.)

[fol. 93]

IN SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

REPLY AFFIDAVIT OF ELLIS HOCKENBERRY, READ IN SUPPORT OF MOTION

State of New York,
County of New York, ss.:

ELLIS HOCKENBERRY, being duly sworn, deposes and says:

I was an International vice-president of the International Union of Electrical, Radio and Machine Workers (A.F.L.-C.I.O.) at the time the grievances were initiated and processed, and I am also the Executive Secretary of the I.U.E.-Westinghouse Conference Board. Robert Nellis, the Chairman of the Conference Board, and I handle all grievances at Step 4 of the grievance procedure under Section XIV of the current collective bargaining agreement. Section XIV-A is the arbitration agreement which is involved in this case.

I am thoroughly familiar with the grievances which are the subject matter of this proceeding to compel the Company to proceed to arbitrate the grievances. I have read the affidavits of Clark C. Frame, dated July 7, 1960; G. M. [fol. 94] Nicholson, dated June 29, 1960; W. W. Heinbach [sic], dated July 8, 1960 and K. H. Smith, dated June 29, 1960.

I wish to make a brief and concise reply to those affidavits. I shall refrain from a full discussion of the Union's claims and contentions in each grievance because I have been informed by counsel that under the recent decisions of the Supreme Court of the United States in the *Steel Workers* cases, the law is firmly fixed that the Court will not enter into any consideration of the merits of the claims of the parties.

I wish to point out at the outset that, as set forth in the petition to compel arbitration submitted by our President, James B. Carey, each and every grievance involves a claim by the Union that the Company has violated one or several provisions of the collective bargaining agreement. In the

grievance which arose in Metuchen, New Jersey, No. 2547-C, the Union claims that the Company has violated Section XII E.1. of the collective bargaining agreement; in the grievance which arose in East Pittsburgh, No. 2079-A, the Union claims that the Company violated Section VIII 8.E.(2)C. of the collective bargaining agreement; in the grievance which arose in Baltimore, Maryland, No. 2286-G, the Union claims that the Company violated Section 1, Paragraph 1, of the National Agreement, the Appendix to the National Agreement, Section VI-A, subsection (b), Section XII and Item 2 of the National Agreement; and in [fol. 95] the grievance which arose in Mansfield, Ohio, No. 1971-C, the Union claims that the Company violated Section XIV-A, Subsection A (2). This being so, it is plain that all of the grievances are arbitrable since the arbitration clause makes arbitrable any unsettled grievance which involves a claimed violation of the provisions of the agreement, as well as the interpretation or application of the agreement, and, of course, makes arbitrable any discharge alleged to have been imposed without just cause.

Despite the clear mandate of the arbitration agreement, the Company persists in its refusal to abide by its agreement to arbitrate on various grounds which should be addressed to the arbitrator rather than to the Court. I respectfully urge the Court to make clear to Westinghouse that in its efforts to entangle the Court in a consideration of the merits of the grievances, it is doing a great disservice to the arbitral process, and by frustrating arbitration it is violating the provisions of Section XIV-A of the agreement.

The Company in its opposing affidavits, seeks to attach prejudicial labels to the various grievances.

* * * * * * *

[fol. 103] When we turn to the grievance which arose in Baltimore, Maryland, No. 2286-G, we find again an effort by the Company to obscure the issues involved by prejudicial terminology.

This grievance the Company refers to as "the certification grievance". Actually, it is nothing of the kind. It merely involves a violation by the Company of the rights

of the Union to represent the employees who perform production and maintenance work and to have the terms of the agreement apply to them.

I have no wish to burden this affidavit, already too long, with a full and complete recitation of the facts. I do say that the affidavit of K. H. Smith does not give the whole [fol. 104] story. Briefly, at the time of the election no production and maintenance work was performed at the Eagle Street plant. At that time the laboratory unit did no production and maintenance work. It was only after the election that the Company gradually moved production and maintenance work to the Eagle Street plant. More than 50% of the production and maintenance workers who had voted in the election as part of the production and maintenance unit, were moved by the Company into the laboratory unit for the purpose of doing production and maintenance work.

Thereafter, the Company moved out of the Eagle Street plant and back to the Wilkens Street Plant. The laboratory unit in the Wilkens Street plant is located on the same floor where production and maintenance workers are employed. The production and maintenance employees who work in the laboratory unit do the same kind of work as is done by the other production and maintenance employees on the same floor; they work on the same machinery, do the same work and there is no physical separation between them. The only difference is that the Company, by moving these production and maintenance workers out of our unit of production and maintenance workers, now seeks to deprive those workers of the benefits of the contract. The simple question in this case is whether the Company can thus destroy the Union contract. The Union believes the Company has violated the agreement in so doing.

[fol. 105] The Company seeks to argue to the Court that only the National Labor Relations Board has jurisdiction to determine whether it has violated its contract. This is a repetition of a similar effort made by the Company to resist arbitration on the ground that a contract violation in another case was at the same time an unfair labor practice. It argued from this that therefore only the National

Labor Relations Board had jurisdiction and the arbitrator had no authority to decide the question. The Court of Appeals in *Carey* v. *Westinghouse Electrical Corp.*, 180 NYS 2d 203, 205; 6 N. Y. 2d 934, aff'd without opinion; 190 NYS 2d 1003, following decisions by the United States Supreme Court and Courts of Appeal, rejected that argument and held that the matter was arbitrable. The similar argument made in connection with this grievance should also be rejected.

I respectfully submit that all of the grievances are arbitrable since they involve claimed violations of the agreement and also the interpretation and application of various provisions of the agreement. As Mr. Justice Douglas said in *Steel Workers* v. *American Manufacturing Co.*,—U. S.—, 46 L. R. R. M. 2414:

> "The function of the court is very limited when the parties have agreed to submit all questions of contract interpretation to the arbitrator. It is then confined to ascertaining whether the party seeking arbitration is making a claim which on its face is governed by the [fol. 106] contract. Whether the moving party is right or wrong is a question of contract interpretation for the arbitrator. In these circumstances the moving party should not be deprived of the arbitrator's judgment, when it was his judgment and all that it connotes that was bargained for.
>
> "The courts therefore have no business weighing the merits of the grievance, considering whether there is equity in a particular claim, or determining whether there is particular language in the written instrument which will support the claim. The agreement is to submit all grievances to arbitration, not merely those the court will deem meritorious. The processing of even frivolous claims may have therapeutic values which those who are not a part of the plant environment may be quite unaware."

Again, in *Steel Workers* v. *Warrior Navigation Co.*,—U. S.—, 42 L. R. R. M. 2416, at 2419, Mr. Justice Douglas said:

"An order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage."

• • • • • • • •

[fol. 107] "In the absence of any express provision excluding a particular grievance from arbitration, we think only the most forceful evidence of a purpose to exclude the claim from arbitration can prevail, particularly where, as here, the exclusion clause is vague and the arbitration clause quite broad."

In his concurring opinion to the three arbitration cases decided by the Supreme Court, and which appears at the end of the opinion in *Steel Workers* v. *Enterprise Wheel and Car Corp.*,—U. S.—, 46 L. R. R. M. 2423, at 2427, Mr. Justice Brennan said:

"And I emphasize this, for the arbitration promise is itself a contract. . . . It is particularly underscored that the arbitral process in collective bargaining presupposes that the parties wanted the informed judgment of an arbitrator, precisely for the reason that judges cannot provide it."

• • • • • • • •

"I do not understand the Court to mean that the application of the principles announced today depends upon the presence of a no-strike clause in the agreement."

[fol. 108] I, therefore, respectfully pray that the Court grant an order directing the Company to proceed with arbitration of all of the grievances set forth in the petition.

(Sworn to by Ellis Hockenberry on September 23, 1960.)

[fol. 111]

IN SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

SUR-REPLY AFFIDAVIT OF K. H. SMITH, READ IN OPPOSITION TO MOTION

State of Pennsylvania,
County of Allegheny, ss.:

K. H. SMITH, being duly sworn, deposes and says:

This affidavit is submitted in reply to the affidavit of Ellis Hockenberry, dated September 23, 1960, in so far as that affidavit pertains to National Appeal Grievance No. 2286-G (Local 130, Baltimore, Maryland) (the Certificate in Grievance).

In my initial affidavit (p. 5), dated June 29, 1960, I pointed out that "At no point in the various grievance steps provided by Section XIV did the Union claim that the grievance involved the 'interpretation, application or claimed violation of provisions of' the National Agreement". The Hockenberry affidavit (p. 2) does not contradict that assertion but simply asserts that the Petition of James B. Carey which instituted this proceeding claims that this grievance involves the contention by the Union [fol. 112] that the Company violated various provisions of the National Agreement. There is no controversy but that the Union, in this proceeding to compel arbitration, is now introducing into the Certification Grievance a claim that it involves violations of the National Agreement. The point of my original affidavit, which I here reassert, is that the Union did not claim any contract violation at any time prior to the filing of the Petition. Attached to this affidavit as Exhibit A is a true photostatic copy of the original grievance (dated March 5, 1958), as contained in the files of the Company. Exhibit A clearly shows that the Certification Grievance was and is a claim that certain employees should be in the Production and Maintenance Unit. There is nothing in the subsequent grievance papers which claims a violation of the National Agreement.

The Hockenberry affidavit (p. 9) also claims that at the time of the 1955 Production and Maintenance Unit election "no production and maintenance work was performed at the Eagle Street plant". The point of my original affidavit (still unchallenged by the Union) is that the Engineering Laboratory employees whether located at Eagle Street or Wilkins Avenue (Engineering Laboratory operations were then in the process of being transferred to Eagle Street) did not vote in the Production and Maintenance Unit election. The Hockenberry affidavit (p. 9) also states that "More than 50% of the production and maintenance workers who had voted in the election as a part of the produc-
[fol. 113] tion and maintenance Unit, were moved by the Company into the laboratory unit for the purpose of doing production and maintenance work." That assertion is not only incorrect, it is patently incredible. The Production and Maintenance Unit contains and has always contained several hundred employees while the Engineering Laboratory contains approximately 20 employees; 50% of several hundred is so much greater than 20 that simple arithmetic demonstrates the error of the Hockenberry affidavit. While the Company does not have records which indicate the names of employees who voted in representation elections, the fact is that, at most, a handful of employees who were doing Production and Maintenance Unit work in 1955 (and who thus voted in the 1955 Production and Maintenance Unit elections) have been upgraded to salaried technical status in the Engineering Laboratory—but those few instances of upgrading do not alter the Unit determinations of the National Labor Relations Board or the Board's certifications of duly elected bargaining representatives The bulk of the Engineering Laboratory employees are members of the Federation and, as a group, they have always been represented by the Federation.

In August of 1960, because of certain problems which had arisen as to the inclusion of professional employees in the Salaried Unit represented by the Federation, the Company
[fol. 114] petitioned the Board to review and redetermine the appropriate composition of the Salaried Unit. Petitioner intervened in that proceeding and had there an op-

portunity to request the Board to determine that the employees who are the subject of this Grievance do not belong in the Salaried Unit, but the Petitioner did not see fit to challenge the appropriateness of the Salaried Unit represented by the Federation.

(Sworn to by K. H. Smith on October 7, 1960.)

[fol. 115]

EXHIBIT A TO SUR-REPLY AFFIDAVIT OF K. H. SMITH

copy

IUE AFL CIO, Local 130
Baltimore, Maryland

Local Grievance No. 1055

Foreman's Name:
Art Wheeler

Date Presented:
March 5, 1958

Steward's Signature:
Marie C. Wright

Dept:
Industrial Electronics

STEP 1 Nature of Grievance:

The Union contends that the employees working on induction heating and are performing assembly and wiring; power brake operations; machining operations; and attending to the tool crib and storeroom operations should be in the IUE, Local 130 bargaining unit.

/s Marie C. Wright

[fol. 116]

IN SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

OPINION OF McGIVERN, *J.*

(New York Law Journal, April 5, 1961)

Matter of Carey (Westinghouse Electric Corp'n)—Petitioner-union and respondent-employer being in disagreement concerning the arbitrability of four grievances arising at different plants of the employer, the union seeks an order to compel arbitration in accordance with the contractual directive that arbitration may not proceed until after a court has determined that such grievance raises an arbitrable issue.

The collective bargaining agreement provides grievance procedures for the settlement of any dispute. It also provides for arbitration of those unsettled grievances which embrace "the interpretation, application or claimed violation of a provision of this agreement" or "a disciplinary penalty, release or discharge which is alleged to have been imposed without just cause". However, there are express limitations on the authority of the arbitrator, so that, among other things, he may not "add to, detract from or in any way alter the provisions of this agreement", nor "establish or modify any wage or salary rate * * * or any time value under the incentive system".

Determination of the issue of arbitrability requires analysis of each of the four grievances in the light of the applicable principles in this field enunciated by our highest court. The policy to be applied here is that declared by Section 203(d) of the Labor Management Relations Act, 1947, 61 Stat. 154, 29 U.S.C. Sec. 173(d) which states, "Final adjustment by a method agreed upon by the parties [fol. 117] is hereby declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement * * *". This section has been fashioned by the federal courts to govern such a situation (Textile Workers Union of America v. Lincoln Mills, 1957, 353 U.S. 448).

In three recent landmark cases (United Steelworkers of America v. American Mfg. Co., 1960, 363 U.S. 564; United Steelworkers of America v. Warrior & Gulf Navigation Co., 1960, 363 U.S. 574; United Steelworkers of America v. Enterprise Wheel & Car Corp., 1960, 363 U.S. 593), the Supreme Court set forth the principles which should guide a court when the question of arbitrability is raised. The Court in those cases pointed out that arbitration of labor disputes, being intended as a substitute for industrial strife, has a quite different function from arbitration under an ordinary commercial agreement and that a collective bargaining agreement "is more than a contract; it is a generalized code to govern a myriad of cases which the draftsmen cannot wholly anticipate" (Warrior & Gulf Co. case at p. 578). It is "an effort to erect a system of industrial self-government" (id. at p. 580).

The intention is that the arbitrator shall "sit to settle disputes at the plant level—disputes that require for their solution knowledge of the customs and practices of a particular factory or of a particular industry as reflected in [fol. 118] particular agreements" (Enterprise Wheel & Car Corp. case at p. 596). "The parties expect that his judgment of a particular grievance will reflect not only what the contract says but, insofar as the collective bargaining agreement permits, such factors as the effect upon productivity of a particular result, its consequences to the morale of the shop, his judgment whether tensions will be heightened or diminished * * *" (Warrior & Gulf Co. case at p. 582).

The Supreme Court has also said that "The function of the court is very limited when the parties have agreed to submit questions of contract interpretation to the arbitrator. It is confined to ascertaining whether the party seeking arbitration is making a claim which on its face is governed by the contract. Whether the moving party is right or wrong is a question of contract interpretation for the arbitrator * * *. The courts, therefore, have no business weighing the merits of the grievance, considering whether there is equity in a particular claim, or determining whether there is particular language in the written instrument

which will support the claim" (American Mfg. Co. case at pp. 567-568), and that "An order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubt should be resolved in favor of coverage" (Warrior & Gulf Co. case at pp. 582-583).

[fol. 119] However, since arbitration must necessarily have a consensual basis, it was also pointed out that "arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit" (id. at p. 582).

I. National Appeal Grievance No. 1971-C.

This grievance involves the refusal of the Company to permit an employee, absent during an illness lasting over 13 months, to return to her job when she allegedly was unable to meet its required physical standards for employment or re-employment. The Union urges arbitrability under the clause covering releases or discharges "without just cause". The Company claims that, in accordance with its practice, this employee's name was after one year of absence removed from its disability rolls, thereby terminating her employment status, so that the subsequent refusal to re-employ her did not constitute a release or discharge within the ambit of the arbitration clause. It contends that it did not consent to submit to arbitration matters relating to the conditions of employment, such as the physical standards fixed by it for employment or re-employment.

Clearly, this is a case of release or discharge, rather than re-employment. The right to arbitrate a question of involuntary termination of employment cannot be denied because of a unilateral practice of the Company not expressly recognized in the collective bargaining agreement. [fol. 120] The entire issue of "just cause" must be decided by the arbitrator, not the Company. In United Steelworkers of America v. American Manufacturing Company, supra, the court held arbitrable an analogous dispute involving a return to work after an injury and a claim of physical inability to do the job (see, also, Maryland Tele-

phone Union v. Chesapeake & Potomac Telephone Co., U.S.D.C., D. Maryland, 187 F. Supp. 101).

The Company also raises the question of laches in the Union's failure to petition the court for more than two years after consent to arbitrate this grievance had been refused. It alleges prejudice by virtue of the death in the interim of the company physician who had examined this employee. Since no time limit for the institution of a court proceeding is set forth in the agreement, such matters as timeliness, prejudice and laches, as any other question involved in the equities or merits of the grievance, must be addressed to the arbitrator.

II. National Appeal Grievance No. 2547-C.

This grievance has to do with the following provision in the collective bargaining agreement: "The [Union] will not oppose the return of supervisory employees to a bargaining unit provided that at the time of promotion they worked on a job which is in the bargaining unit at the time of such return. • • • The employee will be returned to a job, if any, in the bargaining unit to which his seniority entitles him."

[fol. 121] A supervisory employee was returned to a position in his former unit, but to a different job title than that which he had originally held because the former job title had been eliminated. A month later he quit the employ of the Company.

The Union's position is based on the first of the above-quoted sentences, while the Company relies on the last. The Company also semantically argues that the provision does not limit its right to return supervisory employees, since the opening phrase refers only to the fact that the Union "will not oppose" such return under certain conditions. Manifestly, whatever ambiguity arises from the combination of the two sentences is a matter for interpretation by the arbitrator. This is not a case of contract alteration but of contract interpretation (cf. Assn. of Westinghouse Salaried Employees v. Westinghouse Elec. Corp., 188 F. Supp. 225, aff'd 283 F. 2d 93, U.S.C.A., Third Circuit, 1960).

Nor is arbitration precluded because this particular employee has now quit the job. The parties agreed to submit to arbitration any grievance involving "the interpretation, appplication *or* claimed violation of a provision of this agreement" (emphasis added). Petitioner is entitled to "a declaration of the rights and obligations of the parties" to settle an existing dispute of "interpretation" (Matter of Acme Backing Corporation, 2 N Y 2d 963) even in the absence of present "application", particularly where, as here, it did not originate as an academic issue. Whether [fol. 122] the arbitrator will attempt to formulate a general rule or confine himself to the facts of the case or possibly refuse, for valid reasons in his judgment, to entertain the grievance as moot, need not be considered on this threshold application. It is simply held that this dispute concerning the interpretation of a specific provision of the agreement which has arisen between the parties is a matter to be decided by the arbitrator.

III. National Appeal Grievance No. 2079-A.

In 1957 the Company lowered the time value for an operation known as molding. "Time Value" is the period of time fixed by time study, formula, comparison or estimate as the normal time for that particular operation, the "incentive" being in the form of additional compensation for performance in less time.

The Union's grievance is that this 1957 change in time value embraced not only a recent change in method or material but also reflected all changes in the operation going back to 1938. It claims violation of the provision in the agreement that "Management recognizes that time values should be revised as soon as possible after changes have been completed".

The Company contends that since the only effective relief the arbitrator could grant would be to direct it to alter the time value it established in 1957, the grievance is not arbitrable in view of the express contractual prohibition [fol. 123] against establishment or modification of time values by the arbitrator.

To accept the Company's view that because there is no indicated remedy for any violation on its part of the quoted provision concerning prompt revision of time values, the matter is wholly beyond the scope of arbitral consideration would deprive this clause of any force or meaning, though it is a part of the agreement which it made.

Present judicial inquiry need go no further than to determine that a claimed violation is presented which on its face is governed by the contract. The nature of the relief which may be granted by the arbitrator is not a matter of concern at this stage. "The processing of even frivolous claims may have therapeutic values of which those who are not a part of the plant environment may be quite unaware" (Steelworkers v. American Mfg. Co., 363 U.S. at p. 568). Arbitrations may at times furnish a safety-valve for troublesome situations. As stated by the Supreme Court the arbitrator is "to bring his informed judgment to bear in order to reach a fair solution of a problem. This is especially true when it comes to formulating remedies. There the need is for flexibility in meeting a wide variety of situations" (Steelworkers v. Enterprise Corp., 363 U.S. at p. 597). The problem concerns itself with the "claimed violation of a provision of this agreement" and not any claimed power of the arbitrator to "establish or modify any wage or salary rate * * * or any time value under the incentive system". Any question as to the award being in violation [fol. 124] of the prohibition clause should await its rendition.

IV. National Appeal Grievance No. 2286-G.

This grievance poses a problem of union representation affecting the rights of certain employees to choose their own bargaining representative and the right of another union to be made a party to a proceeding seeking the relief herein prayed for—a problem which can be resolved only by the National Labor Relations Board (NLRB). Such relief cannot be granted under the guise of contract interpretation.

At the plant in question two separate employee units for collective bargaining purposes were established by NLRB: (1) production and maintenance employees (called "Pro-

duction and Maintenance Unit"); (2) all salaried technical, clerical, supervisory, etc., employees (called "Salaried Unit"). At separate elections held by NLRB petitioner's predecessor was chosen by a majority of the former, while another union, "Federation", was chosen by a majority of the latter. Each union thereupon entered into a separate collective bargaining agreement with the Company. The agreements expressly stipulate that the Company recognizes the respective unions for those units, for which, after NLRB certification, it was lawfully designated as exclusive bargaining representative, and then proceed to describe those units. In petitioner's agreement the units here involved for which it has been certified are described as "all [fol. 125] production and maintenance employees at its Baltimore works but excluding all salaried technical, office and clerical employees * * *".

At the time of the original NLRB proceeding there was in existence an engineering laboratory at this plant where models were individually built. The laboratory required the services of several expert machinists and operators, who were paid and considered as salaried technical employees, as distinguished from the regular production and maintenance employees who were paid on an hourly basis. These laboratory employees were all included by the NLRB determination in the Salaried Unit, voted in that unit's election, and are represented by "Federation".

Since that election the Company has assigned a number of production and maintenance employees to do work for the laboratory. There is a sharp discrepancy between the parties as to the number of employees affected, the Union apparently claiming the device to be a subterfuge to deprive it of members, while the Company maintains that there is involved only a handful of employees upgraded according to the necessities of the business to do more skilled, salaried technical work for the laboratory. The Union argues that the work they are doing is actually production and maintenance work.

The Union's grievance is that the Company has refused to apply the agreement, its union recognition clause and unit definition, to the production and maintenance employees engaged in the work assigned by the laboratory.

[fol. 126] It claims this involves merely an interpretation of the pertinent sections of the agreement.

The Union's demand, it has been noted, is not limited to production employees transferred subsequent to the election but would cover all employees doing production and maintenance work for the laboratory, even those salaried technical employees employed as such at time of election and represented at all times by "Federation". Furthermore, it should be noted that the Company has the right to add or transfer employees to do work for the laboratory on a salaried basis because of their special skills or increase in its work load.

Since the original determination that production workers for the laboratory were salaried technical employees includable in the Salaried Unit for collective bargaining purposes was made under NLRB auspices, any grievance concerned with the representation of salaried technical employees must be deemed to be within the exclusive jurisdiction of NLRB. Moreover, "Federation" should be a party to such a proceeding and would be only in an NLRB proceeding.

In Matter of Amperex Electronic Corporation, 284 App. Div. 808, First Department, 1954, the employer did not establish its laboratory until after the NLRB election and only then did it employ "technicians". The court held that the question of whether the "technicians" were within the bargaining unit of "production and maintenance employees" was not an arbitrable issue. That case is *a fortiori* dis- [fol. 127] positive of this grievance. The distinction between salaried technical employees and production and maintenance employees was previously made by NLRB and all the employees working for the laboratory were in effect placed by the Board in the separate Salaried Unit.

This is not a case merely of a breach of an agreement which also happens to constitute some unfair labor practice under the federal statute. This might be so if the grievance presented only a superficial change of title, with no involvement of the rights of another union, or of other employees, to choose their bargaining agent in accordance with prior certification of respective bargaining units. This is a grievance which involves the fundamental issue of representation and certification of the composition of a bargaining unit which is solely the province of NLRB. Recognition

of this grievance as an arbitrable issue would be fraught with potential conflict and disrupt the federal scheme in a sensitive and delicate area of industrial relations which has been placed under the exclusive jurisdiction of the National Board. (See Bethlehem Steel Co. v. New York State Labor Relations Board, 330 U.S. 767, 776, 1947; LaCrosse Telephone Corp. v. Wisconsin Employment Relations Board, 336 U.S. 18, 1949).

The Union's application is accordingly granted as to the first three grievances herein enumerated and denied as to the fourth. Settle order.

[fol. 128]

IN SUPREME COURT OF THE STATE OF NEW YORK

APPELLATE DIVISION, FIRST DEPARTMENT

STIPULATION AS TO EXHIBIT—June 28, 1961

It is hereby stipulated and agreed by and between the attorneys for the respective parties hereto that the following-described exhibit need not be printed or reproduced in the record on appeal, but that copies thereof will be handed up to the Court by James B. Carey, etc., petitioner-appellant-respondent herein, on the argument of the appeals herein and may be referred to in the briefs and on the argument with the same force and effect as if incorporated in the printed record on appeal.

1. Agreement between Westinghouse Electric Corporation and International Union of Electrical, Radio and Machine Workers (A.F.L.-C.I.O)—(handed up by [fol. 129] counsel for petitioner at the time of oral argument on the motion before Special Term).

New York, N. Y., June 28, 1961.

Cravath, Swaine & Moore, Attorneys for Respondent-Respondent-Cross Appellant.

Lieberman, Katz & Aronson, Attorneys for Petitioner-Appellant-Respondent.

So Ordered:

BB

[fol. 130]

STIPULATION WAIVING CERTIFICATION

Pursuant to Section 170 of the Civil Practice Act, it is hereby stipulated that the foregoing consists of true and correct copies of the Notices of Appeal, the order appealed from and all the papers upon which the Court below acted in making said order appealed from, and the whole thereof, now on file in the office of the Clerk of the County of New York; and certification thereof by said Clerk, pursuant to Section 616 of the Civil Practice Act, is hereby waived.

Dated: New York, N. Y., September , 1961.

Lieberman, Katz & Aronson, Attorneys for Petitioner-Appellant-Respondent.

Cravath, Swaine & Moore, Attorneys for Respondent-Respondent-Cross-Appellant.

[fol. 131]

IN SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

In the Matter

of

JAMES B. CAREY, as President of INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, A. F. L.-C. I. O., Petitioner,

—against—

WESTINGHOUSE ELECTRIC CORPORATION, Respondent.

NOTICE OF APPEAL TO COURT OF APPEALS—January 4, 1962

Sirs:

Please take notice that petitioner, James B. Carey, as President of International Union of Electrical, Radio and Machine Workers, A. F. L.-C. I. O., hereby appeals to the

Court of Appeals of the State of New York from the order of modification of the Appellate Division of the Supreme Court, for the First Judicial Department, made in this proceeding and filed in the office of the Clerk of said Appellate Division on the 14th day of December, 1961, and a certified copy thereof filed in the office of the Clerk of the County of New York on the 26th day of December, 1961, insofar as it modified the final order entered in the proceeding in the office of the Clerk of the County of New York on the 18th day of April, 1961, by reversing that [fol. 132] portion thereof which granted the motion to compel arbitration of National Grievance No. 2079-A and by affirming that portion thereof which denied the motion to compel arbitration of National Grievance No. 2286-G, and by denying the motion to compel arbitration of both of the aforesaid grievances.

Dated: New York, New York, January 4, 1962.

Yours, etc.

Lieberman, Katz & Aronson, Attorneys for Petitioner, 1501 Broadway, New York 36, New York.

To:

Clerk of the County of New York.

Cravath, Swaine & Moore, Esqs., Attorneys for Respondent, 15 Broad Street, New York, New York.

[fol. 134]

In Supreme Court of the State of New York

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on the 14th day of December, 1961.

Present: Hon. Bernard Botein, P. J., Hon. Francis L. Valente, Hon. Harold A. Stevens, Hon. Samuel W. Eager, Hon. Aron Steuer, J. J.

No. 4098.

In the Matter

of

JAMES B. CAREY, as President of INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, A. F. L.-C. I. O., Petitioner-Appellant-Respondent,

—against—

WESTINGHOUSE ELECTRIC CORPORATION, Respondent--Respondent-Cross-Appellant.

ORDER OF MODIFICATION OF APPELLATE DIVISION APPEALED FROM—December 14, 1961

An appeal having been taken to this Court by the Petitioner-Appellant-Respondent, from so much of an order of [fol. 135] the Supreme Court, New York County, entered April 18, 1961, in New York County, as denied petitioner's motion for an order that arbitration proceed between the parties with respect to an unsettled grievance known to the parties as National Grievance No. 2286-G; and a cross-appeal having been taken by Respondent-Respondent-Cross-Appellant from the same order insofar as it grants petitioner's motion and directs that arbitration proceed between the parties in respect of the unsettled grievances known to the parties as National Grievance Nos. 2079-A and 1971-C.

And said appeal and cross-appeal having been argued by Mr. Isadore Katz, of counsel for Petitioner-Appellant-Respondent, and Mr. John F. Hunt, Jr., of counsel for Respondent-Respondent-Cross-Appellant; and due deliberation having been had thereon, and upon the opinion of the Court in which all Justices concurred except Eager, J., and upon the dissenting opinion of Eager, J.,

It is hereby ordered that the order appealed from be modified, on the law and on the facts, by denying the motion to compel arbitration of National Grievance Nos. 2079-A and

2286-G and granting the petitioner's motion to compel arbitration of National Grievance No. 1971-C, and as so modified, affirmed without costs.

Enter:

A. S.

[fol. 136]

IN SUPREME COURT OF THE STATE OF NEW YORK

APPELLATE DIVISION—FIRST DEPARTMENT

October 1961

Bernard Botein, P.J., Francis L. Valente, Harold A. Stevens, Samuel W. Eager, Aron Steuer, JJ.

4098

Cross appeals by petitioner and respondent respectively from so much of a final order of the Supreme Court at Special Term (McGivern, J.), entered April 18, 1961, in New York County, as (1) denies that part of petitioner's motion for an order directing that arbitration proceed in the manner provided for in the arbitration agreement contained in the collective bargaining agreement, and as (2) grants petitioner's motion and directs that arbitration proceed.

Isadore Katz of counsel (Lieberman, Katz & Aronson and Benjamin Sigal, attorneys) for petitioner-appellant-respondent.

John F. Hunt, Jr. of counsel (John D. Calhoun with him on the brief; Cravath, Swaine & Moore, attorneys) for respondent-respondent-cross-appellant.

[fol. 137]

OPINION OF APPELLATE DIVISION—November 21, 1962

STEUER, J.:

Petitioner, a labor union, instituted this proceeding to compel respondent to arbitrate four grievances. As to one of these, the disposition of Special Term has been acquiesced in by the parties and is not before the Court.

Special Term directed arbitration on two of the grievances and dismissed the petition as to the other. Both parties appeal from the decision in so far as it is adverse to their contentions.

The first grievance, numbered 2079-A, arose in the company's East Pittsburgh plant. For many years the company had an incentive pay program in connection with which it established time values for various operations. From time to time these time values were changed in accordance with changing conditions of operation. The collective bargaining agreement contains the provision: "Management recognizes that time values should be revised as soon as possible after the changes have been completed." (Agreement, Section VIII, § E(2)(c).) In October, 1957, a major change in time value of a molding operation was put into effect. The union claims that the change embraced variances which had accumulated over a period of several years. The union protests the change on the ground it was not timely made in accordance with the Agreement. Special Term ordered arbitration.

The equivocal wording of the phrase relied on, not constituting an agreement, is understood when another clause of the bargaining agreement is considered:

> [fol. 138] "Notwithstanding any other provisions of this Agreement, no arbitrator shall . . . be authorized to:
>
> ". . .
>
> "(2) Establish or modify any wage or salary rate . . . or any time value under the incentive system." (Section XIV-A, D)

When both these provisions are taken into consideration the contractual intent stands revealed. This is the primary guide to the solution of the problem presented (*Steelworkers* v. *Warrior & Gulf Co.*, 363 U. S. 574). The intent is that incentive pay, like all other rates of wage, being the result of completed negotiations, is not subject to further adjustment by arbitration. While the company expressed a policy of implementing the time values to operating

changes as soon as possible, there is no undertaking in that regard. Actually the delay favored the workers. Improvement in processes reduced time values. But until the change was reflected in the reduced time value the worker enjoyed the rate still in effect. When the change was reflected in the incentive pay, the demand to arbitrate followed promptly. But the contract leaves nothing for the arbitrator to determine. What the union really wants determined is that the change in time value—reflecting as it does several minor changes of long standing—should not be allowed to stand because of the delay in effectuating it. But such a decree the arbitrator cannot render.

There is a school of thought, to which Special Term subscribed, that prior to the award the court should not [fol. 139] concern itself with what the arbitrator may decide but that this should be made to await an application to confirm the award. For example, here, if the arbitrator does change the time value, his award may be vacated on such a motion. We believe that whether court action should precede or succeed the arbitrator's award is not subject to unbending rule but presents a question requiring consideration of the nature of the objection and the scheme of the agreement providing for arbitration. The Agreement here provides (Section XIV-A, C (5)) that if either party notifies the American Arbitration Association (which is the body designated to implement arbitrations under the Agreement) that no arbitrable issue is raised, the said Association cannot proceed to process the arbitration until the court has finally determined that there is an arbitrable issue. This provision shows an intent that such questions should be determined before, not after, arbitration has been had. Evidently the parties regarded the saving in time and energy as more important to them than the therapeutic value which the processing of even frivolous claims may have (*Steelworkers* v. *American Mfg. Co.*, 363 U. S. 564, 568). Here no basis can be found for vitiating the expressed and implemented intent of the parties. As the arbitration cannot result in an effectual award, the demand to arbitrate must be denied.

The second grievance is numbered 1971-C. It arose in the company's plant at Mansfield, Ohio. An employee suf-

fered a protracted illness. After she was away from the plant for a year the company dropped her name from its [fol. 140] rolls, thereby effectuating a discharge. About a month later she applied for a position and was given a physical examination by a company doctor who reported that her condition was not such as to warrant her being hired. An examination by her own physician resulted in an opposite opinion. Some months later the union filed this grievance. In the interim the company doctor who had made the examination died.

There is no doubt that a discharge is subject to arbitration (*Carey* v. *Westinghouse*, 6 A D 2d 582, affd. 6 N Y 2d 934). Nor can there be any dispute but that the grounds and method of discharge have never been assented to by the union. So, on its face, the demand for arbitration is unexceptionable. The company raises two objections. The first is that the union does not really object to the discharge but only to the failure to rehire, which is evidenced by the fact that no protest followed the discharge but only eventuated when the former employee's application for a position was rejected. The failure to hire any individual is neither a grievance nor arbitrable. The second objection is that the demand is unavailable because of laches, and the delay is claimed to be prejudicial due to the death of the medical witness.

These objections are mutually contradictory. If the arbitration is confined to the discharge, the failure to rehire and the reasons therefor do not constitute issues. The union argues that in any event laches is a matter for the arbitrator to consider. Undoubtedly this would be so if the laches was a failure to make a timely demand for per- [fol. 141] formance of the contract (*Matter of Lipman*, 289 N. Y. 76). Where the laches is asserted to bar the exercise of the right to arbitrate, the question is not so clear. The court must always decide whether there is an agreement to arbitrate and, ordinarily, this necessity would include a determination of whether the agreement has terminated, either by its terms or the interpretation put upon it by the parties. But where the agreement is in effect, the disposition of whether the particular claim has been shown to be

abandoned by the failure to assert it is a matter of defense for the arbitrator to decide.

The other objection is based upon the presumption that the arbitrator will not pass upon the question of discharge but will adjudicate on the question of failure to rehire. This is an assumption that the court may not indulge in. We agree with Special Term that this grievance should proceed to arbitration.

The remaining grievance is 2286-G and arose in the Baltimore plant. It appears that the company has three classes of employees. One class, composed of clerical help, guards, etc., are not members of either the petitioner union or the Federation of Westinghouse Independent Salaried Unions (herein Federation) and are not involved in any way on this application. Of the others, some are engaged in production and maintenance work on a time basis and are members of petitioner union. The balance are engaged in experimental work, are salaried, and are members of Federation. It should be observed that the distinction between production and maintenance on the one hand and experi- [fol. 142] mental work on the other is not so much a distinction in operative procedures as it is in the purpose for which the work is performed. Generally speaking, while in many instances the same operation is performed at the machines, the experimental work is deemed finer and the designation of an employee to the salaried division is described in the papers as a promotion.

The grievance stated is that certain employees doing certain work at Wilkens Avenue, Baltimore (the site of the experimental work) are actually doing production work and the petitioner union should be recognized as the bargaining agent for these workers. Special Term decided that as the grievance embraced all workers so engaged, including those who were in the salaried class at the time the differentiation was made and the workers selected the respective unions to represent them, the matter was not arbitrable. This conclusion was influenced by the fact the respective unions had been selected under the auspices of the National Labor Relations Board (herein NLRB) and that the question was exclusively determinable by the NLRB. While we

reach a similar conclusion, namely, that the issue is not arbitrable, we do not arrive at it in precisely the same way.

We start with the proposition that a breach of contract does not become *ipso facto* incapable of arbitration because it also happens to be an unfair labor practice (*Lodge No. 12* v. *Cameron Iron Works*, 257 F. 2d 467, U. S. C. A. 5th Circuit). In other words, the field is not preempted. On the other hand, where the NLRB has assumed jurisdiction the orderly process of justice demands that the matter [fol. 143] should not be submitted to another forum, even though a breach of contract may be involved (*Matter of Amperex Electronic Corporation*, 284 App. Div. 808). The dividing line between these extremes would seem to be best fixed at that point where the peculiar expertise of the NLRB has found expression. Undoubtedly one of the fields in which it has so found expression is that of representation. The claims of conflicting unions representing different classifications of employees within one company may be said to be its special province. And there are, of course, other fields. When it is sought to invade one of those fields it is immaterial whether the interference is contemporaneous with the Board's decision (as in *Matter of Amperex, supra*) or seeks to avoid it by a subsequent application to arbitrate (*Matter of Apex Lbr. (Teamsters Local)*, 15 Misc. 2d 15), or seeks to anticipate it, as here. That is not to say that where the question of contract breach is direct and the question of representation is peripheral, arbitration may not be had. It may. (*Freight Drivers* v. *Quinn Freight Lines*, 195 F. Supp. 180, U. S. D. C., Mass.)

The exact position of the issue, vis-a-vis the existing framework of the union representations within the company, must be the deciding factor in a determination of whether the issue is the exclusive province of the NLRB or whether it may also be arbitrable. From the facts revealed on this application, including the extent of the demand for arbitration which clearly encroaches, we conclude that or- [fol. 144] derly process is best served and contract principles are not violated by limiting jurisdiction of the issue here to the NLRB and denying recourse to arbitration.

The order should be modified, on the law and on the facts, by denying the motion as regards grievance 2079-A and, as so modified, affirmed without costs.

All concur except Eager, J., who dissents in part in opinion.

[fol. 145]

EAGER, J. (dissenting in part):

The majority, in affirming Special Term with respect to grievance No. 2286-G, do not adopt the reasoning of Special Term which concluded that the questions involved in the grievance were exclusively determinable by the N. L. R. B.; and the majority state that "the field is not preempted". This has support in the decisions. In *Matter of Klein* v. *Style-Rite Optics, Inc.*, 8 A. D. 2d 811, 812, we said, "There is no question but that there is no pre-emption of enforcement by arbitration or by action in a state court of voluntary agreements merely because a breach might also invoke a federal remedy". See further, *Matter of Carey (Westinghouse Electric)*, 6 A. D. 2d 582, affd. 6 N. Y. 2d 934; *Lodge No. 12, Etc.* v. *Cameron Iron Works*, 257 F. 2d [fol. 146] 467; *Freight Drivers and Helpers Local 557, Etc.* v. *Quinn Freight Lines, Inc.*, 195 F. Supp. 180; *Post Publishing Co.* v. *Cort*, (Mass.) 134 N. E. 2d 431.

The fact that incidentally there may be involved a controversy between the petitioner union and a rival union as to right of representation is immaterial on the question of whether or not the petitioner union is entitled to proceed to arbitration upon a grievance involving the interpretation or alleged breach of provisions of the contract. The argument that the real dispute is between two unions "ignores the fact that the parties by contract agreed to negotiate individual agreements covering any operations in which members of the plaintiff union were not employed, and to arbitrate any differences. The union should not be forced to abandon its rights under the contract simply because the Board may also have jurisdiction of a portion of this dispute." *Freight Drivers and Helpers Local 557, Etc.* v. *Quinn Freight Lines, Inc., supra*, p. 182.

There being no preemption depriving this court or the arbitrators of jurisdiction, then this court is bound to give effect to the agreement of the parties. The contract here required Westinghouse to recognize the petitioner union

as the representative of production and maintenance employees, and a refusal of Westinghouse to do so would constitute a breach of contract. Under the express terms of the contract, a grievance involving the interpretation of the provisions of the contract appertaining to such an alleged breach, and the rights and obligations of the parties in connection therewith, constitutes an arbitrable grievance. Having by their agreement chosen a particular forum [fol. 147] for determination of such a grievance, the parties may not be relegated to remedies before another forum upon the ground that the latter forum is more expert in the particular field or that orderly process would be best served by proceeding before said forum.

Furthermore, the court may not now concern itself with the merits of the grievance (see *Matter of Fownes. Bros. (Glove Cutters)*, 14 A. D. 2d 235) nor with questions pertaining to the jurisdiction of the arbitrators over particular phases of the dispute. The questions of law and fact with respect to the grievance are for the arbitrators, and this, in my opinion, would include questions as to their jurisdiction over particular phases of the grievance, incidental or otherwise. See *Matter of Carey (Westinghouse) supra, Post Publishing Co.* v. *Cort, supra.*

Finally, there is nothing policy-wise which justifies this court in refusing to give effect to the contract that the parties have made. There is no pending proceeding before the N. L. R. B. involving this particular grievance, and the jurisdiction and processes of the Board are not being interfered with. The Federal Act specifically provided that the power of the Board over unfair labor practices "shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise." 29 U. S. C. A., Section 160, Subd. a. "Since the Board's power is plenary in all respects, 'neither the existence of an agreement to arbitrate nor a rendered [fol. 148] award can preclude the Board from exercising its statutory jurisdiction.' But certainly an award or an agreement to arbitrate may serve to temporarily assuage the aggrieved party and afford validity to contract terms (even including unfair labor practices) until a final disposition of the matter of unfair labor practice be made by the Board.

Even though the Board is not bound by an arbitration award, it may find that compliance with the award is not violative of the Act, or it may even, in the exercise of its discretionary power, decline action because an award has been made or arbitration is possible." *Lodge No. 12, Etc.* v. *Cameron Iron Works, supra,* p. 473.

Voluntary arbitration of disputes in labor matters may exist and should be utilized as a remedy concurrent with the full functioning of the National Labor Relations Board. See *Lodge No. 12, Etc.* v. *Cameron Iron Works, supra.* It may so exist and be utilized here. Therefore, I would reverse the order of Special Term insofar as it denies the motion to compel arbitration of grievance No. 2286-G, and I would direct arbitration of such grievance. Otherwise, I concur in the majority opinion.

[fol. 149]

IN COURT OF APPEALS OF THE STATE OF NEW YORK

In the Matter

of

JAMES B. CAREY, as President of INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, A. F. L.-C. I. O., Petitioner-Appellant,

—against—

WESTINGHOUSE ELECTRIC CORPORATION,
Respondent-Cross-Appellant.

STIPULATION DISPENSING WITH PRINTING OF EXHIBIT—February 1, 1962

It is hereby stipulated and agreed by and between the attorneys for the respective parties hereto that the following-described exhibit need not be printed or reproduced in the record on appeal, but that copies thereof will be handed up to the Court by James B. Carey, etc., petitioner-appellant herein, on the argument of the appeal herein and may

be referred to in the briefs and on the argument with the same force and effect as if incorporated in the printed record on appeal:

Agreement between Westinghouse Electric Corporation and International Union of Electrical, Radio and Machine Workers (A. F. L.-C. I. O.)—(handed up by counsel for petitioner at the time of oral argument in the motion before Special Term).

February 1, 1962.

Lieberman, Katz & Aronson, Attorneys for Petitioner-Appellant.

Cravath, Swaine & Moore, Attorneys for Respondent-Cross-Appellant.

[fol. 150]

IN COURT OF APPEALS OF THE STATE OF NEW YORK

STIPULATION WAIVING SECURITY—February 1, 1962

It is hereby stipulated and agreed by and between the attorneys for the respective parties hereto that petitioner-appellant need not give security to perfect his appeal and respondent-cross-appellant need not give security to perfect its cross appeal.

Dated: New York, New York, February 1, 1962.

Lieberman, Katz & Aronson, Attorneys for Petitioner-Appellant.

Cravath, Swaine & Moore, Attorneys for Respondent-Cross-Appellant.

[fol. 151]

IN COURT OF APPEALS OF THE STATE OF NEW YORK

STIPULATION WAIVING CERTIFICATION OF RECORD TO COURT OF APPEALS—February 1, 1962

It is hereby stipulated and agreed by and between the attorneys for the respective parties hereto that the foregoing consists of a true and correct copy of the Record on Appeal to the Appellate Division, First Department, the order of modification, the Notice of Appeal to the Court of Appeals and the Notice of Cross Appeal to the Court of Appeals, all of which are on file in the office of the Clerk of the County of New York, as well as the opinion of the Appellate Division, First Department and the opinion of Eager, J., dissenting, which are on file in the office of the Clerk of that Court.

Certification of all of the foregoing papers is hereby waived.

February 1, 1962.

Lieberman, Katz & Aronson, Attorneys for Petitioner-Appellant.

Cravath, Swaine & Moore, Attorneys for Respondent-Cross-Appellant.

[fol. 152] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 153]

IN COURT OF APPEALS OF THE STATE OF NEW YORK

No. 150

Unrevised and Uncorrected.
Not for Publication.

In the Matter of

JAMES B. CAREY, as President of International Union of Electrical, Radio and Machine Workers, A.F.L.-C.I.O., Appellant-Respondent,

vs.

WESTINGHOUSE ELECTRIC CORPORATION, Respondent-Appellant.

OPINION

PER CURIAM:

We are in accord with the disposition of the Appellate Division in modifying the order of Special Term.

This appeal, the facts of which have been sufficiently set forth in the opinions below, results from a motion to compel the arbitration of three grievances. Arbitration has been ordered as to one, and denied as to the others.

Whether the grievance at the Mansfield, Ohio plant actually concerns re-hiring or discharge is properly a matter to be decided by the arbitrator. Furthermore, the Company is not prejudiced by the inartful manner in which the complaint was originally drawn, since it clearly understood the thrust of the problem.

As to the delay in seeking a court order for arbitration, allegedly amounting to an abandonment of the claim in this case involving a collective bargaining agreement, that question should be argued in the forum which the parties have voluntarily chosen—arbitration (See, *Matter of Straight Line Foundry & Machine Corp.* v. *Wojcik*, 9 N.Y. 2d 867; *Matter of Novelty Fabrics Corp.* v. *Fink*, 2 N.Y. 2d 894; *Steelworkers* v. *American Mfg. Co.*, 363 U.S. 564; *Steelworkers* v. *Warrior & Gulf Co.*, 363 U. S. 574; *Steelworkers*

v. *Enterprise Corp.*, 363 U. S. 593). Nothing herein, however, is to be construed as changing decisions in the usual [fol. 154] arbitration cases, such as *Matter of Zimmerman* v. *Cohen*, 236 N.Y. 15.

We think that the grievance arising at the East Pittsburgh plant, involving the "time value allowance", was not covered by the provisions of the collective bargaining agreement which provided for arbitration. "[S]ince arbitration is a creature of contract, a court must always inquire, when a party seeks to invoke its aid to force a reluctant party to the arbitration table, whether the parties have agreed to arbitrate the particular dispute" (*Steelworkers* v. *American Mfg., supra*, 570-571). The parties here having agreed that no arbitrator should have authorization to "establish or modify" time values, it is clear that such problems had, by agreement, been taken out of the arbitration process outlined in the contract. To submit such a grievance to arbitration now would be an idle gesture, as no valid award could be made. Nowhere in the collective bargaining agreement is there a statement which could be construed to mean that there has been an agreement for "therapeutic" arbitration, incapable of enforcement.

Not only is the character of the time values which may have been set in the original agreement to be determined here (See, *Radio Corporation of America* v. *Association of Professional Engineering Personnel*, 291 F. 2d 105; *International Union of Electrical, Radio and Machine Workers* v. *Westinghouse Electric Corporation*, 268 F. 2d 352), but in addition how much, if at all, pre-existing changes in procedures could be incorporated into management's change of the time values. This must, necessarily, encompass an equitable modification of existing values, which is beyond the range of the authority granted to the arbitrator by the parties (See, *Underwood Corporation* v. *Local 267, International Union of Electrical, Radio & Machine Workers*, 183 F. Supp. 205; *Sunnyvale Westinghouse Salaried Employees Association* v. *Westinghouse Electric Corporation*, 175 F. Supp. 685).

Finally, the grievance at the Baltimore plant, involving [fol. 155] the definition of the bargaining units, seems to us under federal law to be within the exclusive jurisdiction of NLRB, which has the expertise to make clear the precise

nature of the bargaining units certified by it. This view has recently been re-affirmed by the United States Supreme Court, in the following language (*Marine Engineers Beneficial Assoc.* v. *Interlake Steamship Co.*, —— U.S. ——, 30 LW 4437, June 11, 1962):

> "A centralized adjudicatory process is also essential in working out a consistent approach to the status of the many separate unions which may represent interrelated occupations in a single industry. Moreover, as the national agency charged with the administration of the federal labor law, the Board should be free in the first instance to consider the whole spectrum of possible approaches to the question, ranging from a broad definition of 'labor organization' in terms of an entire union to a narrow case-by-case consideration of the issue. Only the Board can knowledgeably weigh the effect of either choice upon the certainty and predictability of labor management relations, or assess the importance of simple administrative convenience in this area.
>
> . . . . . .
>
> The need for protecting the exclusivity of NLRB jurisdiction is obviously greatest when the precise issue brought before a court is in the process of litigation through procedures originating in the Board. While the Board's decision is not the last word, it must assuredly be the first. In addition, when the Board has actually undertaken to decide an issue, relitigation in a state court creates more than a theoretical danger of actual conflict between state and federal regulation of the same controversy."

The First Circuit appears to have reached the same conclusion, in reversing the District Court, in *Raytheon Co.* v. *Local Lodge No. 1836 of District 38 IAM*, —— F. 2d ——, 50 LRRM 2337, decided June 4, 1962. (See also, *International Chemical Workers Union* v. *Olin Mathieson Chemical Corporation*, 202 F. Supp. 363).

The order appealed from should be affirmed, without costs.

[fol. 156] FULD, J. (dissenting in part):

I would modify the order appealed from by reversing so much of it as denies arbitration of the Baltimore plant grievance.

The fact that the matter sought to be arbitrated, turning as it does on a bargaining unit description in the contract's recognition clause, may also involve an unfair labor practice or a question concerning representation which may ultimately give rise to a proceeding before the National Labor Relations Board does not deprive the court of authority to order arbitration and enforce the agreement.

The underlying objective of the national labor laws is to promote collective bargaining agreements and to help give substance to such agreements through the arbitration process. (See *Textile Workers* v. *Lincoln Mills*, 353 U.S. 448, 457; *Steelworkers* v. *American Mfg. Co.*, 363 U.S. 564; *Steelworkers* v. *Warrior & Gulf Co.*, 363 U.S. 574; *Steelworkers* v. *Enterprise Co.*, 363 U.S. 593; *Charles Dowd Box Co., Inc.* v. *Courtney*, 368 U.S. 504; *Local 174, Teamsters, Chauffeurs, Warehousemen & Helpers of America* v. *Lucas Flour Co.*, 369 U.S. 95.)

The controlling statute, section 301 of the National Labor-Management Relations Act, envisages parallel private and public proceedings in situations where a breach of an agreement also involves determinations under the Act. Section 301 was designed to vindicate private rights under a contract, while section 8, relating to unfair labor practices, and section 9, relating to representation, were designed to [fol. 157] vindicate public rights provided under the National Labor Relations Act. The circumstance that there might be a claim before the National Board *at some date in the future* should not operate to deprive the parties of contract rights at the present time. (But cf. *Raytheon Co.* v. *Local Lodge No. 1836 of District 38 IAM*, —— F. 2d —— [50 LRRM 2337, decided by Court of Appeals, First Circuit, June 4, 1962, revg. 201 F. Supp. 334, in which two unions had actually asserted conflicting claims as to representation.) The pre-emption postulates enunciated by the Supreme Court over the past several years (see, e.g., *Garner* v. *Teamsters Union*, 346 U.S. 485; *San Diego Unions* v.

Garmon, 353 U.S. 26; *Marine Engineers Beneficial Association* v. *Interlake Steamship Co.*, —— U.S. ——, decided June 11, 1962) concerned actions instituted in state courts to remedy torts which were, arguably, an unfair labor practice or, arguably, a protected activity under the Federal statute.[1] The prohibitions spelled out in those cases against state court intrusion upon the exclusive jurisdiction of the National Labor Relations Board have no applicability to actions for breach of a collective bargaining agreement.

The collective bargaining agreement governing wages, hours and conditions of employment is the ultimate objective of the labor relations laws. Arbitration is an integral part of the administration and enforcement of the collective bargaining agreement, and Federal and State court sanction an essential aid to such process.

* * *

[fol. 158] Order affirmed, without costs. Opinion Per Curiam. All concur except Fuld, J., who dissents in part and votes to modify in a separate opinion.

[fol. 159]

No. 150

IN COURT OF APPEALS OF THE STATE OF NEW YORK

State of New York, ss.:

Pleas in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 6th day of July in the year of our Lord one thousand nine hundred and sixty-two, before the Judges of said Court.

Witness,

The Hon. Charles S. Desmond, Chief Judge, Presiding.

Raymond J. Cannon, Clerk.

---

[1] In any event, since there was here no claim that the union restrained or coerced the employees or engaged in or encouraged the employees to engage in a strike or resorted to any of the other activities defined in section 8 (b) of the National Labor Relations Act, there is no basis for any charge that the union was guilty of unfair labor practice or prohibited conduct under that statute.

[fol. 160]

No. 150

In the Matter of

JAMES B. CAREY, as President of International Union of Electrical, Radio and Machine Workers, A.F.L.-C.I.O., Appellant-Respondent,

vs.

WESTINGHOUSE ELECTRIC CORPORATION, Respondent-Appellant.

REMITTITUR—July 6, 1962

Be it Remembered, That on the 7th day of April in the year of our Lord one thousand nine hundred and sixty-two, James B. Carey, as President of International Union of Electrical, Radio and Machine Workers, A.F.L.-C.I.O., the appellant-respondent in this cause, came here unto the Court of Appeals, by Lieberman, Katz & Aronson, its attorneys, and filed in the said Court a Notice of Appeal and return thereto from the order of the Appellate Division of the Supreme Court in and for the First Judicial Department. And Westinghouse Electric Corporation, the respondent-appellant in said cause, afterwards appeared in said Court of Appeals by Cravath, Swaine & Moore, its attorneys, and also filed a Notice of Appeal.

Which said Notices of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

[fol. 161] Whereupon, The said Court of Appeals having heard this cause argued by Mr. Isadore Katz, of counsel for the appellant-respondent, and by Mr. John F. Hunt, Jr., of counsel for the respondent-appellant, and after due deliberation had thereon, did order and adjudge that the order of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is affirmed, without costs.

And it was also further ordered, that the records aforesaid, and the proceedings in this Court, be remitted to the Supreme Court of the State of New York, there to be proceeded upon according to law.

[fol. 162] Therefore, it is considered that the said order be affirmed, without costs, as aforesaid.

And hereupon, as well the Notices of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Supreme Court, before the Justices thereof, &c.

Raymond J. Cannon, Clerk of the Court of Appeals of the State of New York.

Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 164]

At a Special Term, Part II of the Supreme Court, held in and for the County of New York at the Court House thereof, New York, New York, on the 10th day of September 1962.

Present: Hon. Samuel M. Gold, Justice.

Index No. 8637/1960

In the Matter

of

JAMES B. CAREY, as President of INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, A.F.L.-C.I.O., Petitioner,

—against—

WESTINGHOUSE ELECTRIC CORPORATION, Respondent.

ORDER MAKING JUDGMENT OF THE COURT OF APPEALS THE JUDGMENT OF SUPREME COURT—September 10, 1962

Petitioner having appealed to the Court of Appeals of the State of New York from the order of modification of the Appellate Division of the Supreme Court for the First Judicial Department, made herein and filed on December 14, 1961, in the office of the Clerk of said Appellate Division, and entered in the office of the Clerk of the County of New York on December 26, 1961, in so far as it modified the final order herein entered April 18, 1961, in the office of the Clerk of the County of New York by reversing that portion thereof which granted the motion to compel arbitration of National Grievance No. 2079-A and by affirming that portion thereof which denied the motion to compel arbitration of National Grievance No. 2286-G, and by denying the motion to compel arbitration of both of the aforesaid grievances; and Respondent having cross-appealed to said Court of Appeals from said order of modification in so far as it affirmed said final order granting petitioner's motion to compel respondent to submit to arbitration a controversy [fol. 165] between them known as National Appeal Grievance No. 1971-C; and after argument said Court of Appeals having made an order and judgment on July 6, 1962, affirming, without costs, said order of modification of said Appellate Division so appealed from, and ordering that the records and proceedings in said Court of Appeals be remitted to this Court to be proceeded upon according to law,

Now, upon reading and filing the remittitur of the Court of Appeals, it is

Ordered that said order and judgment of the Court of Appeals of the State of New York be, and hereby is, made the order and judgment of this Court.

Enter

S. M. G., J.S.C.

[File endorsement omitted]

[fol. 166]

THE SUPREME COURT OF THE UNITED STATES

October Term, 1962

No. 485

JAMES B. CAREY, as President of the International Union of Electrical, Radio and Machine Workers, AFL-CIO, Petitioner,

v.

WESTINGHOUSE ELECTRIC CORPORATION, Respondent.

STIPULATION AND ADDITION TO RECORD—Filed May 16, 1963

To the Honorable, the Justices of the Supreme Court of the United States:

It is hereby stipulated and agreed by and between counsel for the respective parties to the above entitled cause that the printed record shall consist of the following:

I The following portions of the printed record filed in the Court of Appeals of the State of New York:

Page A-1—Statement to the Court of Appeals

Page 1—Statement Under Rule 234

Pages 2 and 3—Notice of Appeal

Pages 5 through 7—Order Appealed From

Pages 8 and 9—Notice of Motion

Pages 10 through 52—The following portions of Petition of James B. Carey in Support of Motion:

Page 10 through page 18 as far as, but not including, the words "*National Appeal Grievance 2547-C*" on the eighth line from the bottom of the page.

[fol. 167] Page 24 commencing with the words *"National Appeal Grievance 2286-G"* on the 15th line from the bottom of the page through page 27.

Page 30 commencing with paragraph numbered 27 through page 31.

Page 40 through page 45—Exhibits 5, 6, and 7.

From page 53 to page 57,—The following portions of Answer to Petition:

Page 53 as far as, but not including, paragraph numbered 2.

Page 54 commencing with paragraph numbered 6 through page 55 as far as, but not including, paragraph numbered 9.

Page 56 paragraphs 11 and 12.

Page 56 commencing with *"Respondent for an affirmative defense"*, appears on the second line from the bottom of the page, through page 57.

Page 58 through page 64—Affidavit of Clark Frame

Page 65 through page 76—Affidavit of K. H. Smith

From page 93 to page 108—The following portions of Reply Affidavit of Ellis Hockenberry:

Page 93 through page 95 to, but not including, the words "It refers to the grievance in the Metuchen" which appear on the seventh line from the bottom of its page.

Page 103 commencing with "When we turn to the grievance", which appears on the fifteenth line from the bottom of the page, through page 108.

Page 111 through page 115—Sur-Reply Affidavit of K. H. Smith and Exhibit A attached thereto.

Page 116 through page 127—Opinion of McGivern, J.

Page 128 through page 129—Stipulation as to Exhibit.

Page 130—Stipulation Waiving Certification.

Page 131 through page 132—Notice of Appeal to the Court of Appeals.

[fol. 168] Page 134 through page 135—Order of Modification Appealed From.

Page 136 through page 144—Opinion of Appellate Division

Page 145 through page 148—Opinion of Eager, J.

Page 149—Stipulation Dispensing with Printing of Exhibit.

Page 150—Stipulation Waiving Security.

Page 151—Stipulation Waiving Certification of Record.

II Opinions and order of the Court of Appeals

III Remittitur to the Supreme Court of the State of New York.

IV Order on Remittitur entered September 10, 1962.

V It Is Further Stipulated And Agreed that the Agreement between Westinghouse Electric Corporation and International Union of Electrical, Radio and Machine Workers, a copy of which is attached hereto and which has been treated as part of the record in the courts below (see pp. 128, 149 of the printed record below), is to be considered as part of the record filed with the Supreme Court. Forty copies of this agreement will be submitted to be bound with the printed record.

VI It Is Further Stipulated And Agreed that any of the parties may refer in their briefs and argument to the record filed in the Supreme Court of the United States, including any part thereof which has not been printed.

David S. Davidson, Counsel for Petitioner;

John F. Hunt, Jr., Counsel for Respondent.

[fol. 169]

AGREEMENT BETWEEN WESTINGHOUSE ELECTRIC CORPORATION AND INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS (A.F.L.-C.I.O.)

(See Opposite)

AGREEMENT

between

WESTINGHOUSE ELECTRIC CORPORATION

and

INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS (A.F.L.-C.I.O.)

EFFECTIVE
OCTOBER 1, 1960

AS MODIFIED BY

SUPPLEMENT I DATED OCTOBER 1, 1960
SUPPLEMENT II DATED JUNE 1, 1961
SUPPLEMENT III DATED DECEMBER 21, 1961
SUPPLEMENT IV DATED SEPTEMBER 24, 1962
SUPPLEMENT V DATED JUNE 30, 1963
SUPPLEMENT VI DATED SEPTEMBER 18, 1964
SUPPLEMENT VII DATED MARCH 29, 1965

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AGREEMENT

Between

WESTINGHOUSE ELECTRIC CORPORATION

and

INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, A.F.L.-C.I.O.

AS MODIFIED BY

SUPPLEMENT I DATED OCTOBER 1, 1950
SUPPLEMENT II DATED JUNE 1, 1951
SUPPLEMENT III DATED DECEMBER 21, 1951
SUPPLEMENT IV DATED SEPTEMBER 25, 1952
SUPPLEMENT V DATED JUNE 30, 1953
SUPPLEMENT VI DATED SEPTEMBER 10, 1954
SUPPLEMENT VII DATED MARCH 20, 1956

INTRODUCTION

AGREEMENT, entered into as of the 1st day of October, 1950 between WESTINGHOUSE ELECTRIC CORPORATION, hereinafter referred to as the "Company," and the INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, A.F.L.-C.I.O., hereinafter referred to as the "Union," acting for itself and on behalf of and in conjunction with its various Locals hereinafter specified, which are hereinafter referred to as the "Locals."

SECTION I—RECOGNITION

1. The Company agrees to recognize the Union, on behalf of and in conjunction with its Locals, for those units where the Union or its Locals, through a lawful National Labor Relations Board certification, have been

lawfully designated as the exclusive bargaining representative for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment. The units and Locals referred to in the preceding sentence are set forth in the Appendix attached hereto and made a part of this Agreement.

2. Any units for which the Union or any of its Locals shall be lawfully certified by the National Labor Relations Board as exclusive bargaining representative, shall, upon assent in writing to this Agreement by such representative, be included in and covered by this Agreement as of the date of certification, except that either party may withhold the application of those portions of this Agreement considered inapplicable to such units by giving written notice to the other party within thirty (30) days of such representative's assent.

SECTION II—COMMITTEE

The Union has designated a committee of seven (7) consisting of at least one International Officer of the Union and representatives of its Locals, and the Company has designated a committee of seven (7) as its representatives, for the purpose of considering, pursuant to the provisions of this Agreement, all matters relating thereto which said representatives of the Union and the Company, respectively, may deem Company-wide and generally applicable to the various certified collective bargaining units. Either party may, at any time, change said representatives, provided that neither party will be represented by more than seven (7) representatives at any one time.

SECTION III—CONSIDERATION AND COOPERATION

This Agreement is entered into in consideration of the mutual performance thereof in good faith by both parties.

The intention of this Agreement is to establish harmonious relations between the Company and the Union and its membership and to promote the general welfare of the Company and the employes. The parties to this Agreement agree to cooperate in every reasonable way in carrying out the provisions hereof and to exchange such information with respect hereto as is mutually deemed essential for the furtherance of harmonious relations. The Union recognizes that it is the responsibility of the Company and its Plant Managements to maintain plant efficiency and agrees that Management shall have the freedom of action necessary to discharge its responsibility for the successful operation of the Company. This responsibility includes, among other things, the determination of the number and location of its plants; the selection of those with whom it will do business; and the determination of the products to be manufactured and the production schedules. This section does not limit or modify the rights of the parties under any other provisions of this Agreement or of the applicable local supp[illegible].

SECTION IV—DISCRIMINATION—MANAGEMENT

There will be no discrimination by supervisory or other employes of the Company not included in the units covered by this Agreement, against any employe because of membership or activities in the Union.

SECTION V—DISCRIMINATION—UNION

The Union agrees that neither it, nor its Locals, nor their respective officers and members, nor persons employed directly or indirectly by the Union or its Locals, will discriminate against any employe. The Union further agrees that there will be no solicitation of members, dues, or funds during the working hours of employes involved.

SECTION VI—STRIKES, STOPPAGES, AND LOCKOUTS

A. Subject to the provisions of Section XVIII hereof, the Union and the Locals will not cause or officially sanction their members to cause or take part in any strike (including sit-downs, stay-ins, slow-downs, or any other stoppage of work) during the life of this Agreement. This includes disputes which are within the proper scope of the grievance procedure provided in this Agreement or the applicable local supplement (a) until such grievance procedure has been fully exhausted, and (b) thereafter except as provided in Paragraph B below. The Company will not lock out any employe, nor will the Company transfer work from any job because of a dispute which is within the proper scope of the grievance procedure provided herein, until such grievance procedure has been fully exhausted.

B. When the grievance procedure has been exhausted as provided for in Section XIV, the Union headquarters may authorize a strike of the employes in a bargaining unit in support of a grievance involving such bargaining unit. Such a strike, when so authorized, shall not be a violation of this Section if all of the following conditions are satisfied: (a) if written notice that Management's reply at the national appeal level is unsatisfactory (Paragraph B3, Section XIV) has been given, (b) if the grievance is not subject to arbitration under Section XIV-A, and (c) if written notice of the Union's authorization to the Local to strike has been given to the Company not less than three (3) days prior to the strike. When the Company has questioned the arbitrability of a grievance under Section XIV-A subparagraph C. 5., the Local shall have the right to strike in support of such grievance, after satisfying condition (c) of this paragraph.

SECTION VI-A—UNION SHOP

A. Effective Date, Period Covered, Notification to Employes

1. This Section shall become effective immediately with respect to each unit covered as of June 1, 1951, by a certificate of the National Labor Relations Board, pursuant to Section 9 (e) (1) of the National Labor Relations Act, that at least a majority of the employes in such unit have voted to authorize the Union or a Local of the Union to make an agreement with the Company requiring membership therein as a condition of employment. The units referred to in the preceding sentence are listed in Appendix B which is attached hereto and made a part hereof.

2. At any time during the life of this Agreement, a Local may submit to local Management a petition signed by a majority of the eligible employes in any bargaining unit represented by it and covered by this Agreement which is not listed in Appendix B, requesting that the Union Shop provisions of this Section VI-A be extended to such bargaining unit. The form of such petition shall be, "We hereby request that the Union Shop provisions of Section VI-A of the National Agreement between Westinghouse and the IUE-AFL-CIO be extended to the bargaining unit of ..... employes at the ..... plant." The employes in the bargaining unit on the active roll during the last complete payroll period ending prior to the submission of the petition shall be the employes considered in determining eligibility and majority under these provisions.

3. Unless Management advises the Local in writing within ten working days after it receives such petition that it questions the number or authenticity of the signatures, this Section VI-A shall become effective with respect to such bargaining unit on the eleventh working day after such receipt, provided that the Union and the Local involved have, during the preceding twelve (12) months, received from the National Labor Relations Board a

notice of compliance with Sections 9 (f), (g) and (h) of the National Labor Relations Act (the presentation of the petition shall constitute a certification that such is the fact), and further provided that no certification of rescission of authority to enter into a union security agreement covering such bargaining unit, or any part thereof, shall have been issued by the Board during such twelve (12) months period pursuant to Section 8 (a) (3) of such Act. If Management raises a question concerning the number or authenticity of the signatures during the ten working days period, representatives of local Management and the Local will meet promptly to discuss the matter. If the matter is not settled locally by mutual agreement within ten working days after the question is raised, it may be presented by either party as a national appeal level grievance.

4. The Company shall, for a reasonable time, post a bulletin board notice quoting the provisions of this Section for the information of affected employes.

B. Employes Who Are Union Members

1. Every employe who on June 1, 1951 is in a unit listed in Appendix B and who is a member of the Union on or after July 2, 1951, shall, as a condition of employment, maintain his membership in the Union.

2. Every employe who is in a unit other than those listed in Appendix B on the date this Section becomes effective with respect to such unit and who is a member of the Union on or after the thirty-first (31st) day after such effective date shall, as a condition of employment, maintain his membership in the Union.

3. No employe shall be considered a member of the Union on the date after which he is required to maintain his Union membership under Paragraphs 1 or 2 above if he notifies the Company and the Union or the Local in writing prior to such date that he wishes to terminate his membership.

C. Employes Who Are Not Union Members

1. Any employe in a unit listed in Appendix B who is not a member of the Union on July 2, 1951, and any employe in any other unit who is not a member of the Union on the thirty-first (31st) day after the date this Section becomes effective with respect to the unit in which he is employed, shall not be required to become a member of the Union as a condition of continued employment. Any such employe who thereafter becomes a member of the Union shall, however, maintain his membership as a condition of employment thereafter.

D. Hires, Rehires and Transferred Employes

1. Every person who is first hired on a job in a unit after this Section has become effective with respect to such unit shall, as a condition of continued employment, be a member of the Union on and after the forty-fifth (45th) day after the date of his hire, and shall thereafter maintain his membership in the Union.

2. Any employe who is transferred to a job in a unit covered by this Section (whether or not the job from which the employe is transferred is in a unit covered by this Section), and any former employe who is rehired on a job in a unit covered by this Section, shall be governed by the provisions of Paragraph D.1. above, with their date of transfer or rehire being considered equivalent to the date of hire referred to in such Paragraph D.1.

E. Withdrawal Period

Notwithstanding any other provisions of this Section, every employe who is otherwise required under this Section to obtain and/or maintain membership in the Union shall have the right, after having obtained such membership, to resign from the Union by giving written notice thereof to the Company and to the Union or the Local during the period from June 4 to June 11, inclusive, of each year (such period is hereafter referred to as the "withdrawal period"). Such notice shall be deemed to have been properly given if it is postmarked, or is re-

ceived by the Company and the Union or the Local, during the withdrawal period. Any employe who resigns from the Union during a withdrawal period shall not thereafter be obligated to obtain or maintain membership in the Union unless he shall thereafter, during the life of this Agreement, again become a member of the Union, in which case he shall maintain his membership as a condition of employment thereafter, subject to his right to resign during any subsequent withdrawal period as provided in this Paragraph E.

F. Procedure for Termination of Employment

1. The Company shall be obligated under this Section to terminate the employment of any employe by reason of his failure to obtain or to maintain membership in the Union as required by this Section upon receipt of written request for such termination from the Union; except that the Company shall have the right to refuse such request if it has reasonable grounds for believing (i) that such membership is not available to the employe on the same terms and conditions generally applicable to other members, or (ii) that membership has been denied or terminated for reasons other than the failure of the employe to tender the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership.

2. The Union agrees to indemnify and save harmless the Company from any payment the Company may be required to make in favor of any employe whose employment is terminated pursuant to any such request.

G. Definitions

For the purpose of this Section:

(a) The term "employe" means any person on the active payroll or the disability payroll of the Company or on leave of absence from the Company, except employes of the type referred to in Paragraph H. It does not include persons who have been laid off, whether or not they are on any seniority list, and such persons shall, when recalled

to work, be considered as newly hired employes. (see Paragraph D.1.)

(b) The term "initiation fee" means such amount as may be uniformly charged by the appropriate Local as a condition of granting membership in such Local and in the Union; providing, however, that no amount in excess of $10.00 shall be considered as an initiation fee for purposes of this Section.

(c) The term "dues" shall not be deemed to include any fine, assessment, contribution, tax or other form of payment required from Union members except the payment required in equal amounts from every member once during each month.

H. Technical and Professional Employes

This Section shall not apply to any technical or professional employes, including but not limited to engineers; salesmen (inside or outside) or sales assistants; negotiation correspondents; methods engineers or time study men; technical or creative writers; staff assistants or staff specialists reporting to department managers; laboratory technicians; buyers; internal auditors or budget accountants; and nurses.

I. State Laws

This Section shall not apply to employes employed in any state during any period (i) while the laws of such state provide, in substance, that it is illegal or against public policy to make union membership a condition of employment, or (ii) while such laws impose restrictions upon the making of union security agreements which have not been fully complied with.

SECTION VII—CHECKOFF

1. Dues Deduction Authorizations

a. For the duration of the Agreement, the Company shall deduct from the first pay of each month Union dues and promptly remit same to the respective Locals of the Union, for those employes in the bargaining units whose written and signed authorizations (on the following form), with all blank spaces properly filled in, are received by the Company.

Name (Print).....

(First) (Middle Initial) (Last)

Effective Date.....Social Security No.....

TO WESTINGHOUSE ELECTRIC CORPORATION

Please deduct $..... from my pay each month and remit same to Local..... International Union of Electrical, Radio & Machine Workers, A.F.L.-C.I.O., in accordance with this authorization and assignment, in payment of the monthly membership dues of such Local. In addition, please deduct my initiation fee $..... as part of the first month's deduction of membership dues and remit same to said Local.

This assignment and authorization shall be irrevocable, except that it may be revoked by my giving written notice to you by individual registered mail postmarked, or received by the Company, either (a) during a period from the first June 4 to the first June 11, both inclusive, after the effective date of this authorization, (b) during the same period of each year thereafter, or (c) after the termination date of the National Agreement (dated July 14, 1950) between Westinghouse Electric Corporation and the International Union of Electrical, Radio and Machine Workers, A.F.L.-C.I.O. This assignment and authorization supersedes all authorizations and assignments previously signed by me with respect to union dues and/or initiation fees.

....

Section Check No. Employe's Signature

I.U.E. DEDUCTION AUTHORIZATION

b. The date in parenthesis in clause (c) of the form may be changed to read "(dated October 1, 1950)".

c. On or before June 18 of each year, local Management will furnish the Local with a list of employes who have revoked their deduction authorization during the preceding revocation period of June 4 to June 11.

2. Starting Deductions

a. Deductions for employes whose authorizations are received after the effective date of this Agreement will be commenced with the first month starting after receipt of the respective authorizations. The date of receipt will be recorded on the authorization by the Company, and such record shall be conclusive on all parties concerned. For weekly payrolls, all authorizations received by the last Friday in the calendar month will be included in the deduction for the following month. For monthly payrolls, all authorizations received by the last working day of the calendar month will be included in the deductions for the following month.

b. Deduction will be made from the first pay of the month in the case of weekly payrolls and from the end-of-month pay in the case of monthly payrolls. Collection of any back dues owed at the time of starting deduction for any employe will be the responsibility of the Union and will not be the subject of payroll deduction.

3. Delinquencies

Dues unpaid because the employe was not working during the first pay period of the month will be deducted from the first pay period worked in that month. If an employe does not work at any time during the month, dues for the month not worked will not be deducted by the Company from pay in any subsequent month.

4. Adjustment of Errors

Except where the Company has made a clerical error in the deduction for dues which will be adjusted promptly

by the Company, any question as to the correctness of the amount deducted shall be settled between the employe and the Local; and the Union shall indemnify the Company and save it harmless against any and all suits, claims, demands and liabilities that shall arise out of or by reason of any action that shall be taken by the Company for the purpose of complying with the provisions of this Section VII or in reliance on any authorization form or information furnished to the Company under such provisions.

5. Reinstatements

Employes who return to the active payroll from sickness or leave of absence shall have dues deductions automatically reinstated upon return to work, providing their individual written and signed authorizations for the deduction of such amounts are still in effect. When an employe is rehired in the same bargaining unit after layoff, his deduction authorization (if in effect at time of separation) shall be reinstated only if he signs a request for continuation of such deductions on the reverse side of the card.

6. Transfers

When employes are transferred from a bargaining unit represented by one Local to a bargaining unit represented by a different Local, deduction of dues will be discontinued at the place from which the transfer is made, and will be resumed at the point to which the transfer is made only after receipt of new written and signed authorizations. Deductions will also be automatically discontinued when an employe is transferred to work outside of any bargaining unit covered by this Agreement; except that where the transfer is to a newly created position at the same location which the Local considers to be a part of an existing bargaining unit the deductions will be continued until a determination has been made as to whether or not the new position is in the bargaining unit.

7. Contact with the Union

One employe in the Accounting Department at each

payroll source will be designated to confer with an individual designated by the Local and clear all questions regarding the detail of record and reconciliation of deduction of dues.

8. Report and Remittances to Union

a. Within fifteen days after the last pay day for the first pay period in the month, a check for the total deductions made in that pay period shall be sent to the Local with substantiating list attached. In the case of weekly payrolls, the remittance will include dues deducted from pay periods after the first week of the previous month from employes who were not working in the first pay period.

b. Each list of deductions sent to the Locals shall show for all employes on the active roll from whom deductions have been made (1) name, (2) shop location, (3) Social Security Number, (4) amount of the deduction from each individual employe, and (5) reason for non-deduction if known.

c. Attached to the list accompanying remittance to the Local will be a summary indicating the total amount deducted and the number of employes from whom dues deductions were made.

d. A summarization of local remittance summaries will be forwarded on or about the 20th of the following month to the International Union of Electrical, Radio and Machine Workers, A.F.L.-C.I.O., 1126 Sixteenth Street, N.W., Washington 6, D.C.

SECTION VIII—WAGES

Wages will be paid in accordance with wage schedules effective in the various bargaining units. All wage schedules are negotiated locally. The following provisions affecting wages are applicable to all units.

1. Women on Men's Jobs

Women placed on jobs classified by the Company as men's jobs shall receive men's rates of pay.

2. Payroll Administration

The accumulation of unreported time on completed work beyond the current pay period is not permitted except as has been, or may be, provided for in local supplements.

3. Night Turn Adjustment

Employes working night turn will receive an extra compensation of 10% of that portion of their earnings on night turn resulting from payment of their guaranteed rate minus 18 cents per hour when the regular quitting time is after nine o'clock in the evening (9:00 P.M.) and up to and including nine o'clock (9:00 A.M.) of the following day.

4. Four Hours of Work

Hourly employes who report to work at the regular starting time of their shift and have not been advised at least ten (10) hours beforehand not to report, and those who report to work at other times at Management's request, will be guaranteed four (4) hours work at their guaranteed rate or the rate of pay for the job on which they work, whichever is higher. If work is not provided during some or all of such four (4) hours, the employe will be paid at his daywork rate for such period. If the employe has qualified for overtime in accordance with the overtime provisions of this Agreement, overtime rates based on the provisions of this Agreement (Section X—Overtime) will be paid for hours not worked.

NOTE: The foregoing provisions will not apply in the case of an emergency such as fire, flood, power failure, or work stoppage by employes in the plant.

5. Groups and Group Leaders' Remuneration

a. (1) A group leader is a non-supervisory employe who

is a working member of a group, without disciplinary authority, who works under a minimum of supervision, who regularly leads, instructs, and guides employes in the group.

(2) Group leading is in addition to an employe's regular assigned job, and the deciding factor in their selection will be that the senior employe who has the ability to organize and direct a group will be selected.

b. Hourly

The remuneration for hourly group leaders depends for the most part on the work performed and the size of the group. Additional compensation paid for hourly group leaders is based on schedules negotiated locally.

c. Salary

(1) Appropriate groups for salary employes based on securing better operations will be determined locally by Management and will be a subject for negotiation before they are established.

(2) Duties of a group leader will not be assigned to an employe where less than three (3) employes are involved. No group of more than twenty (20) exclusive of the leader will be formed. Additional compensation for group leaders will be based on the following schedule:

SCHEDULE

Size of Group, exclusive of the leader	Addition to Base Rate
2 to 5	5%
6 to 10	7.5%
11 to 20	10%

6. Salary Schedules; Hourly and Salary Reviews

a. Salaries will be paid according to a local schedule effective in each bargaining unit.

b. Salary reviews will be held semi-annually to assure administration of wage policies, except that due to existing circumstances, the Local and local Management

by mutual agreement may either change or omit the scheduled review.

c. The employe's capacity to handle the range of work of his position classification, and the quality and quantity of work being performed, are the factors which determine the granting of increases.

d. Salaried employes whose work is satisfactory will receive not less than 10% above the minimum of the rate range not later than the first of the seventh month after employment.

e. Other salary increases within a rate range will be based on work performance. An employe transferred to a higher class position, whose work performance justifies it, will receive, not later than the first of the seventh month after transfer, an increase to at least 10% above the minimum rate of the new position. An employe whose rate before transfer is above the minimum of the new classification and whose work performance justifies it will receive an increase within the rate range not later than the first of the seventh month after transfer. Where the employe is known to be qualified and the transfer is to another position in the same occupational line of work in the department, the increase will be granted at the time of transfer.

f. All changes for any reason in an employe's position or rate after hiring, except separation, will be effective the first of a payroll period.

g. The procedure for hourly and salary reviews will be covered in local supplements.

7. Information

a. That portion of Company instructions contained in the Company's Industrial Relations and Accounting Manual (Part 6) which covers (a) government orders and laws affecting employes and dealing with wages, hours, and working conditions, or government interpretations of such orders and laws, or (b) instructions

on interpretations of this Agreement, will, upon issuance by the Company, be sent to the Locals and the Union.

b. Local Plant Management shall furnish the Local involved with (a) copies of all general interpretations by local Management of the information furnished under Paragraph a. above, and (b) general interpretations of the local supplements.

c. Each Local will be furnished a schedule of rates or keysheets, applying to the employes in the bargaining unit. Each Local will be furnished periodically, as established locally, a record of transfers, hires, rehires, and releases. Job descriptions will be made available, upon request, for examination by Local representatives and new or revised job descriptions established on or after October 1, 1952, including the classifications by labor grade or rate range of the job, will be furnished to the Local Union office.

8. Time Values and General Wage Procedures for Incentive Operations

A. (1) The Westinghouse incentive systems afford an opportunity for extra earnings for extra effort and guarantee only the incentive guaranteed rate. The establishing of methods of manufacture, equipment to be used, and processes to be followed and the administration of the incentive systems will be Management's responsibility. This includes the establishing of time values for wage-payment purposes by the following methods: by time study, from formula or data, by comparison, or by estimate.

(2) The foregoing methods will be used for the purpose of establishing recorded or temporary time values on new work or for revising time values on changed work. Management agrees to correct immediately any time values which are questioned and found to be in error.

B. Operations on Which No Time Values are Established.

(1) When Management assigns an incentive operator

temporarily to a job, on which no time values are established, other than his regular job, to use his skill and ability or for Management's convenience, when his regular work is available he will be paid his average earned rate as determined locally or the rate of the job, whichever is higher.

(2) The elapsed daywork hours that normally go through the incentive group resulting from a daywork job will be paid on the basis of the daywork rate. The same practice will apply to an individual incentive operator. Any dispute growing out of the amount or type of daywork assigned to incentive groups will be handled in accordance with local procedure.

C. The policy concerning temporary assignments of incentive or day workers to jobs other than their regular jobs where conditions are other than those covered in paragraph B (1), and the payment policy for such cases, will be a matter of local negotiations.

D. Operations on Which Temporary Values are Established

Time values are temporary when all or portions of the value are estimated or derived from data or information not specifically developed for the operations for which the value is determined. Temporary values will not be established for operations time studied in detail. Temporary time values will be established as soon as possible, consistent with conditions locally. Temporary time values will become recorded values not later than six (6) months from the date the item repeats on a new manufacturing order. However, where the manufacturing problems become stabilized in a shorter interval, the period for establishing the recorded value will be determined locally. If the original order is for a large quantity and the delivery schedule covers a considerable period, the period for establishing the recorded value will be determined locally. Orders for samples built on engineering or shop development and

sales distributor's sample orders are not considered to be new manufacturing orders.

E. Recorded time values (as differentiated from temporary time values) will be changed only for the following reasons:

(1) When a clerical error has been made in the determination of the time value.

(2) (a) When there is a change in the method of manufacture, tools, material, design, production conditions or servicing conditions that affects the time value, only that portion of the value affected by the change will be adjusted. Sufficient additional elements to those affected by the change may be time studied to determine the effect of the change on the existing time value.

(b) When a change is to be made in an operation, the time value for which is not broken down into elements, a time study may be taken before the change is made in order to establish the elements of the existing time value; but the time value will not be changed as a result of this study. When the change in the operation is made the provisions of sub-section (2) (a) of this paragraph will apply.

(c) Management recognizes that time values should be revised as soon as possible after the changes have been completed.

F. Surveys, including time measurements, but not time studies, may be made to plan for production improvements. These surveys shall not include time studies on individual operations. The results of such surveys will not be used to establish time values for wage-payment purposes. Management will inform the appropriate Local representative in advance of the purpose of such studies.

G. Cameras will not be used to determine or establish time values. When Management desires to use cameras for other purposes, the reason will be discussed with the Local representative in advance.

H. Payment for all elapsed hours not covered by other sections of this agreement (such as visiting Medical and Employment Departments and waiting time) will be at the employe's guaranteed rate. Employes assigned to work on inventory will be paid in accordance with subparagraph B (1).

I. Any questions that arise concerning time values and general wage procedures will be handled in accordance with the established local grievance procedure.

9. Daywork and Salary Operations

A. The principle of a fair day's work for a fair day's pay is recognized by the Union, the Locals, the employes and the Company. Where production standards are established, they will be in line with the foregoing principle and will be based on established methods, remaining on the job for the normal periods during the entire shift, subject to all customary allowance time, and the application of effort equivalent to the normal and reasonable capacity of normal operators working on the job under the prevailing conditions. In grievance and arbitration proceedings resulting from claims that any such production standard is unreasonable or unsound, the principles and yardsticks set forth in this paragraph will be controlling.

B. Surveys and time studies may be made for measuring or improving production, methods analysis or for budget purposes. The Company may apply individual production standards only to direct dayworkers. Direct dayworkers are those engaged directly in the making or building of a product of a factory department or section, together with such others as may be agreed upon in local supplements. All other dayworkers in a plant are indirect workers.

C. Management agrees to keep the appropriate local union representatives informed in advance, so

far as possible, of the programming and purpose of such studies.

D. Changes to be made, as the result of a time study, in job classifications or in the classification of individual employes (other than changes due to normal operation of the seniority procedure) will be discussed with the appropriate local union representative before they are made effective. If a grievance is filed protesting any such change, it shall be subject to arbitration; and the arbitrator may determine the proper classification of the job or the employe under the existing classification system in the bargaining unit. The arbitrator may also direct appropriate corrective action as of the date of the change, but in no event more than thirty (30) days prior to filing of the grievance.

E. Any grievance claiming that an individual employe has been disciplined or downgraded for failure to meet production standards established for productive daywork operations will be subject to arbitration under the provisions of Section XIV-A. The arbitrator shall not have authority to modify production standards; but in deciding whether there was just cause in a case arising under this Paragraph, he may consider whether the standard involved is proper under the fair day's work or pay principle mentioned above. If the arbitrator sustains the grievance on the ground that the standard involved is not proper, local Management will review it with the appropriate Local representative. Unless and until such standard is revised in accordance with the arbitrator's decision or is accepted by the Local, no employe shall be subject to discipline or downgrading for failure to meet such standard.

F. If any grievance is filed claiming that a production standard established for an employe's work is unreasonable, and the foreman is unable to adjust the matter, the standard will be reviewed, and re-

studied within a reasonable time if the operation is continuing, and if the standard is incorrect it will be revised. If, after such review and restudy, the employe still protests the standard, the supervisor, upon request of the steward, will review with the steward the facts of the case, including the time study, review or restudy, or other basis for the standard. If the matter is not adjusted, the steward may, together with one other union representative, observe the operations to determine whether the standard conforms with the guides and principles of Paragraph 9 A. above. If there is still a question concerning such standard the question may be handled in accordance with the grievance and arbitration procedures, leading to final and binding decision in arbitration. The parties will consider and seek to agree upon a single skilled arbitrator with industrial engineering training and experience to handle all production standards cases, and if they are unable to do so within sixty (60) days from the date this sub-paragraph becomes effective, then upon the request of either party, upon reasonable notice to the other, a permanent standards arbitrator will be selected in accordance with the appropriate procedures of the Federal Mediation and Conciliation Service. Such selections will be made for periods of not less than twelve (12) months, and any vacancy will be filled in accordance with the foregoing procedure. The compensation and expense of such arbitrator will be divided equally between the Company and the Union.

10. Changes in Wage Payment Plans

A. When the established plan of payment of employes (daywork, individual incentive, or group incentive) is to be changed, it will be a matter of local negotations.

B. The Company agrees that it will not make any changes in the established plan of payment on a plant-wide basis, either in its entirety or in a series

of piece-meal changes, in any bargaining unit for which there is a local wage supplement in effect, except by agreement between local Management and the Local. The Company agrees as of the effective date of Supplement VII hereto immediately to enter into local wage supplements covering such units as do not on such date have local wage supplements in effect by converting the current key sheets (or the current job rates where there are no key sheets established) into wage supplements.

C. In all other situations not related to the preceding paragraph, whether or not local wage schedules have been incorporated into local wage supplements, it will be the policy of the Company and the normal practice not to change the established plan of payment of employes from incentive to daywork or from daywork to incentive except after discussion and agreement between the local Management and the Local. If in any instance a Local unreasonably withholds its consent, then after a period of negotiations of not less than two weeks, the local Management may elect to put the change into effect, but the Local will thereupon have the right to strike over this issue. The question whether consent was withheld unreasonably shall not be arbitrable.

11. Leave—Death in Immediate Family

An hourly-paid employe with three (3) months' continuous service who is absent from work solely because of the death and funeral of his or her parent, brother, sister, child or spouse will be compensated for time lost by him from his regular schedule by reason of such absence, up to a maximum of three (3) days for each such absence. Incentive employes will be compensated on the basis of their average earned rate for the calendar quarter immediately preceding such absence. Daywork employes will be compensated on the basis of their rate of record on the date of such absences.

SECTION IX—HOURS OF WORK

1. The basic work week will be forty (40) hours based on eight (8) hours per day, five (5) days per week, Monday to Friday inclusive. An employe's work day is the twenty-four hour period beginning with his regularly assigned starting time of his workshift, and his day of rest starts at the same time on the day or days he is not scheduled to work. His work week starts with his regularly assigned work period on Monday. Variations in hours of work and the schedules of hours of the several shifts are subjects for local negotiations.

2. The provision for payment of night turn adjustment (Section VIII, paragraph 2) and overtime (Section X) shall be inapplicable to employes on continuous shift operations. Such provisions for payment of night turn adjustment shall also be inapplicable to any special groups of employes who have not heretofore received extra compensation for working night turn hours; and such provisions for payment of overtime shall also be inapplicable to any special group of employes who have not heretofore received overtime pay for work on particular days as such. The local policies in effect at the date of this Agreement with respect to overtime and night turn adjustment for continuous shift operations and for such special groups will be incorporated in local supplements, with only such changes as are made by mutual agreement.

SECTION X—OVERTIME

For overtime purposes the average earned rate will consist of straight time earnings, including guaranteed rate, night turn bonus, group leader remuneration, and incentive payments. Special provisions and all exceptions to this Section X will be contained in local supplements as provided in Paragraph 2 of Section IX.

1. Hourly

Overtime payments will be made to hourly-paid employes under the following conditions:

a. Time and one-half—i.e., hourly earnings plus one-half (½) the employe's average earned rate for the payroll period involved—for:

(1) All hours worked in excess of eight (8) hours but less than twelve (12) in any day (Monday to Friday, inclusive).

(2) All hours worked less than twelve (12) on Saturday.

(3) All hours worked less than eight (8) on observed holidays for which the employe receives additional payment under Section XI.

b. Double time—i.e., hourly earnings plus the employe's average earned rate for the payroll period involved—for:

(1) All hours worked on Sundays.

(2) All hours worked on calendar Sundays outside of the employe's established shift.

(3) All hours worked after twelve (12) hours in any day (Monday to Saturday, inclusive).

(4) All hours worked on observed holidays for which the employe is not eligible for payment under Section XI.

(5) All hours worked on observed holidays after eight (8) hours for which the employe receives additional payment under Section XI.

2. Salary

a. All hours worked by salaried employes who are paid overtime on hours worked in excess of eight (8) hours in any day or forty (40) hours in any week will be paid at overtime rate, i.e., the hourly earnings plus an additional payment for each hour so worked equal to one-half the employe's average earned hourly rate for the payroll period involved.

b. Hours worked on Sundays after forty hours have been worked in the week, by salaried employes who are paid overtime on hours worked, will be paid for at the employe's hourly earnings plus an additional payment

for each hour so worked equal to the employe's average earned hourly rate.

c. Absent hours considered as excusable will be considered as hours worked for determining overtime.

d. Hours worked on observed holidays, by salaried employes who are paid overtime on hours worked, will be paid for at the employe's hourly earnings plus an additional payment for each hour so worked equal to one-half the employe's average earned hourly rate. Such payment is in addition to the employe's salary.

SECTION XI—HOLIDAYS AND VACATIONS

1. Holidays

a. Holidays observed by the Company will be New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas. Holidays falling on Sunday will be observed on Monday.

b. In any calendar year in which one or more of such holidays fall on Saturday, such holiday or holidays will not be an observed holiday in such year within the meaning of this Agreement, but another day or days between Monday and Friday, both inclusive, will be observed during such year in place of the Saturday holiday or holidays. Local Management at each location shall be required to designate such alternative day or days before January 1 of such calendar year after the matter has been discussed between the Local and local Management.

c. When the necessary arrangements can be made and it is satisfactory to the Local and local Management, another day may be permanently substituted for Washington's Birthday through a provision in the local supplement. When a state law requires the observance of a holiday not listed above, it shall be the holiday

substituted for Washington's Birthday, if the parties have agreed to make a substitution.

d. All hourly paid employes who have completed three (3) months' continuous service immediately preceding an observed holiday will be paid for their established shift hours on such holiday.

Hourly paid employes who were laid off for lack of work and are rehired within one (1) year after layoff, who completed three (3) months' continuous service prior to their layoff, will receive the above holiday payment.

e. Employes will be paid for such hours at their average earned rate, as defined in Section X, for the payroll period involved.

f. The above payment will be made only to hourly paid employes who are on the active roll as of the day before the observed holiday within the week and who earn some wages during the week in which such holiday falls or any of the four preceding weeks.

g. Salary employes will be paid for the seven (7) observed holidays.

2. Vacations

a. The Company will permit vacations to be taken as desired by employes as far as practical, consistent with efficient operations.

b. When the vacation period of a salaried employe includes one of the seven (7) recognized holidays in his regularly scheduled work week, or the vacation period of an hourly paid employe includes one of the seven (7) paid holidays, an additional day of vacation will be granted with pay, in lieu of the holiday.

c. Due to the nature of the operations, some locations will shut down annually for vacation purposes, and the time of year of the shutdown will be a matter for local negotiations. In such locations the vacations will run concurrently with the shut-down period. Employes

who become eligible for vacations subsequent to the annual shut-down, but before the end of the year, will be granted vacation pay, when they become eligible, if they were absent during the shut-down period, without additional time off. It is recognized that some employes will be requested to work during the shut-down period.

d. Where an employe is removed from the active roll for any reason, payment for vacation not taken for the current year will be made if the employe has qualified for vacation.

A. Hourly Employes

(1) The Company will grant vacations to hourly rated employes as follows:

(a) Over one (1) year of total employment but less than two (2) years with three (3) months' continuous employment immediately preceding the time of starting vacation—1 week.

(b) Over two (2) years' total employment but less than three (3) years with three (3) months' continuous employment immediately preceding the time of starting vacation—1 week plus 1 day.

(c) Over three (3) years' total employment but less than four (4) years with three (3) months' continuous employment immediately preceding the time of starting vacation—1 week plus 2 days.

(d) Over four (4) years' total employment but less than five (5) years with three (3) months' continuous employment immediately preceding the time of starting vacation—1 week plus 3 days.

(e) Over five (5) years' total employment with three (3) months' continuous employment immediately preceding the time of starting vacation—2 weeks.

(f) Over eleven (11) years' total employment but less than twelve (12) years with three (3) months' continuous employment immediately preceding the time of starting vacation—2 weeks plus 1 day.*

(g)* Over twelve (12) years' total employment but less than thirteen (13) years with three (3) months' continuous employment immediately preceding the time of starting vacation—2 weeks plus 2 days.

(h)* Over thirteen (13) years' total employment but less than fourteen (14) years with three (3) months' continuous employment immediately preceding the time of starting vacation—2 weeks plus 3 days.

(i)* Over fourteen (14) years' total employment but less than fifteen (15) years with three (3) months' continuous employment immediately preceding the time of starting vacation—2 weeks plus 4 days.

(j) Over fifteen (15) years' total employment with three (3) months' continuous employment immediately preceding the time of starting vacation—3 weeks.

******Effective January 1, 1956***

(2) Vacations will be paid at the average earned rate of the hourly rated employe during the last complete accounting quarter-year prior to the vacation involved; however, the average earned rate for a particular quarter shall be continued in use for payments applicable to the first two weekly pay periods of the second accounting quarter following. The average earned rate for vacation purposes will consist of straight time earnings, including guaranteed rate, night turn bonus, group leader remuneration, and incentive payments. Vacation hours will be based upon the number of hours regularly scheduled in the basic work week, Monday to Friday inclusive.

B. Salaried Employes

(1) The Company will grant vacations to salaried employes as follows:

(a) Over one (1) year, but less than eleven (11) years of total employment with three (3) months continuous employment immediately preceding the time of starting vacation—2 weeks.*

(b) Over eleven (11) years' total employment but less than twelve (12) years with three (3) months' continuous employment immediately preceding the time of starting vacation—2 weeks plus 1 day.*

(c) Over twelve (12) years' total employment but less than thirteen (13) years with three (3) months' continuous employment immediately preceding the time of starting vacation—2 weeks plus 2 days.*

(d) Over thirteen (13) years' total employment but less than fourteen (14) years with three (3) months' continuous employment immediately preceding the time of starting vacation—2 weeks plus 3 days.*

(e) Over fourteen (14) years' total employment but less than fifteen (15) years with three (3) months' continuous employment immediately preceding the time of starting vacation—2 weeks plus 4 days.*

(f) Over fifteen (15) years' total employment with three (3) months' continuous employment immediately preceding the time of starting vacation—3 weeks.

**Effective January 1, 1956*

(2) Payment will be made at the recorded salary rate of such employes, plus night turn bonus, group leader remuneration, and incentive payments, if any.

SECTION XII—SENIORITY

A. In all cases of rehiring or lay-offs due to increasing or decreasing forces, accumulated length of service will

govern if the employe can do the job with only such training as an employe with previous experience on such job would require.

B. Seniority Credit

1. An employe on leave of absence is not on the active roll, but will accumulate service during leave of absence. An employe on furlough is on the active roll and will accumulate service while on furlough. An employe laid off is not on the active roll and will not accumulate service while laid off, but will receive credit for former service when rehired.

2. The extent of notice to be given to newly hired hourly and salaried employes during their probationary period, if their services are unsatisfactory, and the length of such period, shall be embodied in the local supplements.

C. Active Seniority List

1. The composition of seniority units will be negotiated locally and embodied in local supplements.

2. An Active Seniority List will be made up for each seniority unit on the basis of accumulated length of service.

3. The procedure governing the decreasing or increasing of the working force within the seniority units established under the provisions of sub-section one (1) above are contained in paragraphs F and G below.

D. Inactive Seniority List

1. The names of those laid off will be placed on the Inactive Seniority List.

2. The names of employes who voluntarily quit, who are released, or who are discharged will not be placed on the Inactive Seniority List.

3. The names of employes will be removed from the Inactive Seniority List in line with provisions of the local supplements as negotiated locally.

4. The manner in which employes will be called back to work and the method of notification will be negotiated locally and included in the local supplements.

E. Return of Employes to Bargaining Units

1. The Locals will not oppose the return of supervisory employes to a bargaining unit provided that at the time of promotion they worked on a job which is in the bargaining unit at the time of such return. Seniority credit of such employes will include the period the employe spent as a supervisor. The employe will be returned to a job, if any, in the bargaining unit to which his seniority entitles him.

2. The question of whether or not non-supervisory employes may return to the bargaining unit is a matter for local negotiation.

F. Decrease in Working Force

1. It is mutually recognized that to operate a plant, or any part thereof, at a schedule that gives employes less than a full week of work is unsatisfactory to both the employes and the Company. Temporary reductions in production will be bridged by furloughing of employes in accordance with local procedure. When there is a definite reduction in the production schedule for a group or section, employes will be laid off to maintain a full work week. The parties may negotiate at any time temporary modifications of this procedure and the periods of time during which they will be in effect.

2. It is understood and agreed that in all cases of layoffs due to decreasing forces, accumulated length of service will govern, and employes will be permitted to displace other employes only if the employe can perform the duties of the job with only such training as an employe with previous experience on such job would require.

3. Locals which have heretofore recognized the principle that there shall be a differential in accumulated length of service required before one employe can displace another will continue to do so and negotiate the amount of differential for inclusion in local supplements. Other Locals may recognize the principle and negotiate the matter with local Management.

4. At the time of layoff, an employe on personal leave of absence or on the disability roll will be laid off and his name will be added to the Inactive Seniority List when, because of his seniority status under the established seniority procedure, he would have been laid off if he were actively at work. Notice of such layoffs will be given to the Local and to the employe involved at his last known address, but the usual notice periods outlined below in Paragraph H shall not apply. Any objection to such layoff must be made by filing a grievance within two (2) weeks following the giving of such notice to the Local. Layoff pursuant to this provision shall not affect any right to benefits or coverage under the Social Insurance Plan to which the employe has already become entitled prior to the layoff, either for himself or his dependents, by reason of his disability or leave of absence.

G. Increase in Working Force—Transfers and Upgrading

In all cases of transfers and upgrading to fill open jobs, accumulated length of service will govern if the employe's experience, although not necessarily on the same type of work, indicates that he can do the job. The filling of open jobs from the Inactive Seniority List will follow the provisions contained in local supplements provided the employe can do the job with only such training as an employe with previous experience on such job would require.

H. Notice Period

1. Employes released, or selected for lay-off because of

lack of work, shall be advised of the reasons therefor at least three working days before such release or lay-off becomes effective. The steward shall be so notified before the notice is given to the employe involved. Such employes will be given three days' work, or pay if work is not provided.

2. The provision in the last preceding paragraph does not apply in case of discharge due to a serious infraction of Company rules. The steward and the Local's office will be notified with the reasons therefor within one working day.

3. In cases where conditions require furloughing of employes, the steward will receive reasonable advance notice in accordance with conditions as they arise, before the employes involved are notified. The employe will be given as much advance notice as practical.

I. Work Assignments—Graduate Student Training Course

It is recognized that practical work experience is necessary for the proper training of Graduate Students; therefore, work assignments will be made in line with the following provisions:

1. During such assignment the student will not replace a regular employe. His time will be charged to the Educational Department and not to the group in which he is working. He will not be subject to the seniority provisions of this agreement or the local supplements.

2. If working in an incentive group, the allowed hours of work produced by the student will be credited to the group.

3. Each assignment will not exceed six (6) weeks.

J. Seniority Preference

1. At the written request of the Local, an elected shop steward will be given seniority preference at the time when lay-offs take place within the section, department or division for which he is acting as steward. Such

seniority preference will enable him to retain his job within the section, department or division for which he is acting as steward so long as such job remains and when the job no longer exists the elected shop steward will be given seniority preference for another job in the same labor grade or successively lower labor grades if he can perform the duties of the job with only such training as an employe with previous experience on such job would require. Elected officers, upon written request of the Local, will be given at the time of reduction in working force similar seniority preference within the bargaining unit in which they are employed.

2. (a) A group of employes not to exceed one per cent of the Active Seniority List but not less than two employes in any bargaining unit will be given preference as set forth below due to special skill in key occupations, or because of unusual ability for training purposes to fill key jobs either in the plants or field locations. The jobs requiring special skill in key occupations for which employes are to be given seniority preference, as differentiated from jobs for training purposes, are to be negotiated locally. The jobs for which employes are to be trained, the list of employes to be given such seniority preference and the reasons therefor will be supplied to the Local and will be kept up-to-date by local Management. The list will be discussed with the Local prior to being made effective. Objections by the Local are subject to the grievance procedure.

(b) Employes on this list may be upgraded or transferred to an open job for the purpose of specialized training. In case of competitive bidding with other employes for the open job, skill and ability will be the determining factor.

(c) An employe on this list will be given seniority preference at the time when lay-offs take place within the section, department or division in which he is employed. Such seniority preference will enable him to retain his job within the section, department or

division so long as such job remains, and when the job no longer exists he will be given preference for another job in the same labor grade or successively lower labor grades if he has had training for such jobs.

(d) If the name of any employe is removed from the list, the job held by such employe shall be declared open and filled in accordance with all applicable seniority provisions as though there were no employe on the job.

K. Details and Procedures

Local supplements will cover the details of the above provisions and in the negotiation of such local supplements due consideration will be given to Management's responsibility for the efficient operation of the Plants. When special problems arise that were not anticipated by local seniority supplements, which will adversely affect the efficient operation of the Plants, they will be subject to negotiation by the local Management and the Local with the intent of resolving the problem in an equitable manner.

SECTION XIII—LEAVE OF ABSENCE

A. Upon the written request of the Local or Union an employe elected to a Local or a Union office or appointed as a full-time Union representative will be granted the usual leave of absence without loss of seniority, not to exceed one (1) year unless an extension is granted, and the determination as to whether such extension will be granted will be reached through collective bargaining between the Local and Plant Management, but in no case shall leave or leaves of absence or extensions thereof total more than three (3) years.

B. At the end of his or her mission such employe who has been granted a leave of absence will be restored on the basis of seniority to his or her former position or similar position at the going rate at the time of his or her return.

SECTION XIV—SETTLEMENT OF DISPUTES

A. Local Grievance Procedure

1. Local Managements are to be kept advised by the Locals as to the names of their authorized representatives.

2. Local officers and stewards will not conduct any form of union business during working hours except after they have been granted permission to do so as provided below. Before leaving work to conduct union business, the Local officer or steward will report to his foreman or supervisor and request permission to leave his job, which will be granted unless his departure would cause serious interference with operations. In such cases the foreman or supervisor will make arrangements for the Local officer or steward to leave his job as promptly as possible.

3. For the purposes of this section union business is defined to mean: (a) investigation of a problem concerning rates of pay, wages, hours of employment, or other conditions of employment; (b) attendance at a meeting with one or more representatives of Management for handling or adjustment of grievances or for the purpose of collective bargaining; and (c) absence from the plant to conduct union business off Company property.

4. There will be three steps for processing grievances at the plant level.

STEP 1. The steward will request permission from his foreman or supervisor to leave his job to investigate a problem concerning rates of pay, wages, hours of employment, or other conditions of employment. The steward will inform the foreman which employe or group of employes he intends to contact. The employe or group of employes must be in the area the steward represents. The foreman will grant permission as provided for in Paragraph A2.

If the problem is not settled, a grievance may then be presented to the foreman. If the grievance cannot then be settled immediately, a time will be set for the first step grievance meeting.

If the steward and the foreman are unable to settle the grievance, the steward may request the presence of the Local representative next in line above him in the Local's organization to further investigate and consult with him concerning the problem, and this permission will be granted. It is not intended that this will be done in every case but only when the steward considers it necessary. Details of arranging for the services of this representative will be determined locally. If the problem is not then resolved, the steward will again meet with the foreman. If the grievance is not then resolved at this step, it goes to the second step.

STEP 2. When a grievance is unresolved at STEP 1, Management and Local representatives at the second level will arrange for a meeting.

STEP 3. When a grievance is unresolved at STEP 2, it will be presented to Management and Local representatives at the third level, who will arrange a meeting.

It is understood that, during discussion of the grievance at STEP 1, the foreman and the steward may investigate the grievance together and at either STEP 2 or STEP 3 a sub-committee of Management and Local representatives may investigate the grievance at the location of the problem.

5. One Union representative (Section or Department Steward) and one Management representative (Section or Department Foreman or Supervisor) will handle grievances at the first step. Union and Management representatives will not exceed three each at the second step and will not exceed seven each at the third step. The titles or designation of the Union and Management

representatives at the second and third steps will be determined locally. The number of representatives and the number of steps may be reduced by local agreement.

6. The Company's only obligation to pay for time spent on union business by Local representatives shall be to divide equally with the respective Locals the payment for time spent within the Plant by Local representatives (who are in the active employ of the Company) during the representatives' regular working hours while meeting with a member or members of local Management for handling or adjustment of grievances, or for the purposes of collective bargaining.

B. General Provisions and Appeal Grievance Procedure

1. It is the intention of this Agreement that local Management and the Locals shall make every effort to settle all grievances at the local level.

2. If local Management's final reply to a grievance of the Local is unsatisfactory, the Local or the Union may choose to refer such grievance to the national level, in which case the Union will so notify the Company's headquarters in writing. When a Local refers a grievance to the national appeal level, or when the Union takes such grievance to the national appeal level, which in either case must be done within thirty (30) days from the date of local Management's final answer, the grievance procedure shall be considered as having been fully exhausted only after the Union advises the Company in writing that the Company's reply at the national appeal level is unsatisfactory. The Local will inform local Management in writing when it refers a grievance to the national appeal level.

3. Upon reference of a grievance to the national appeal level, representatives of the Company and the Union shall meet within thirty (30) days following such reference at a time mutually agreed upon in an effort to settle such grievance. Not later than the time for such meeting, the Union should provide an outline of its position, stating the facts and the contractual provisions on which it relies to support such position. Failure to provide such an outline shall not prejudice the Union in any respect. Written replies shall be given to grievances at the appeal level within fifteen (15) days following conclusion of the appeal level meeting unless Management advises the Union at such meeting that additional time may be required. In that event, the written reply shall be given within thirty (30) days following the conclusion of the appeal level meeting. All of the foregoing time limits may be extended by mutual agreement.

4. The Union and the Company may consider referring a grievance to arbitration in accordance with Section XIV-A by mutual agreement at any time.

5. Should the parties fail to resolve any grievance subject to arbitration under Section XIV-A after exhausting the grievance procedure at the national level, the provisions of Section XIV-A shall apply.

6. Either party's reply to a grievance of the other party will be considered final at any level of the grievance procedure (local or appeal) and the grievance closed, if written notification to the contrary is not received within thirty (30) days of the date of such reply.

7. Failure to present an argument at any step of the grievance procedure shall not prejudice either party at a later step of the grievance procedure or in the arbitration procedure.

SECTION XIV-A—ARBITRATION

A. Except as otherwise provided in this Agreement, any grievance involving action taken or failure to act subsequent to the effective date of Supplement VII to this Agreement which remains unsettled after the grievance procedure has been exhausted pursuant to Section XIV and which involves either

(1) The interpretation, application or claimed violation of a provision of this Agreement or of a local supplement in effect in the bargaining unit in which the grievance arose, or

(2) a disciplinary penalty, release or discharge which is alleged to have been imposed without just cause,

shall be submitted to arbitration upon the written request of either the Union or the Company. Such request shall be made within thirty (30) days after the Company receives notice that its final reply at the national appeal level is unsatisfactory. If no request for arbitration is made by either the Company or the Union during such thirty (30) day period, both parties shall be deemed to have waived their right to make such request. For the purpose of proceedings within the scope of (2) above, the standard to be applied by an arbitrator to cases involving disciplinary penalties, releases or discharges is that they shall be imposed only for just cause.

B. (1) Within fifteen (15) days after receipt of a request for arbitration by the Company or the Union, representatives of the parties shall attempt to reach mutual agreement on the arbitrator. If the parties fail to reach such mutual agreement on the arbitrator within the 15-day period, either party may, within ten (10) days thereafter, request the American Arbitration Association to submit

a list of names from the Association's panels, from which an arbitrator may be chosen.

(2) The parties shall also attempt to reach agreement on the question to be arbitrated. If agreement is reached, either party may withdraw from the agreement at any time thereafter until the hearing is closed if it believes the statement does not properly cover the matters at issue. Such withdrawal shall not prejudice the withdrawing party in any respect.

C. In the selection of an arbitrator and the conduct of any arbitration proceeding, the Voluntary Labor Arbitration Rules of the American Arbitration Association, as amended and in effect March 1, 1952 (and which have remained in effect until the effective date of this Section) shall control, except that:

(1) No arbitrator shall be appointed by the Association who has not been approved by both parties unless and until the parties have had submitted to them three lists of arbitrators from the Association's Panels, and have been unable to select a mutually satisfactory arbitrator therefrom;

(2) Either party may be represented by counsel at any hearing without prior notification to the other party or to the Association;

(3) No modification of such Rules of the Association shall be controlling in any arbitration proceeding under this Agreement without mutual agreement in writing by the Company and the Union, except that both parties will comply with modifications to the extent that they involve the amount of the administrative fees of the Association;

(4) The arbitrator shall have no authority to issue any subpoena or other form of legal process or award to compel either party to produce new evidence (not already presented during processing

of the grievance in the grievance procedure) considered by such party to be confidential or not relevant or material to the proceeding, or which is not available. This shall not limit the arbitrator's authority to compel the production of information which this Agreement or a local supplement requires either party to provide the other;

(5) The American Arbitration Association shall have no authority to process a request for arbitration or appoint an arbitrator if either party shall advise the Association that the grievance desired to be arbitrated does not, in its opinion, raise an arbitrable issue. In such event, the Association shall have authority to process the request for arbitration and appoint an arbitrator in accordance with this Agreement and the above-mentioned Rules only after a final judgment of a Court has determined that the grievance upon which the arbitration has been requested raises an arbitrable issue or issues. The foregoing part of this Paragraph 5 shall not be applicable if by its terms the request for arbitration requests only relief from a disciplinary penalty, release or discharge alleged to have been imposed without just cause.'

D. Notwithstanding any other provisions of this Agreement, no arbitrator shall, without specific written agreement of the Company and the Union with respect to the arbitration proceeding before him, be authorized to:

(1) Add to, detract from, or in any way alter the provisions of this Agreement or any Supplement or local supplement to this Agreement;

(2) Establish or modify any wage or salary rate, job classification or classification of any employe except as provided in Section VIII, Paragraphs 9. D. and 9. E., or any time value under the incentive system.

(3) Make any award with respect to the release of any new employe during his or her probationary period;

(4) Make any award involving any matter relating to any pension and/or insurance agreement between the parties, any pension or insurance plan referred to or made a part of any such agreement, or the establishment, change, interpretation, application or administration of any pension or insurance plan;

(5) Make any award requiring payment to any employe for any period more than thirty (30) days preceding the filing of the grievance.

E. If the arbitration proceeding concerns a seniority grievance from a plant in which there is no local supplement on seniority at the time the action in question was taken, the arbitrator shall consider the provisions of this Agreement together with the seniority practices existent in the bargaining unit at the time the action in question was taken which are not in conflict with this Agreement.

F. The award of an arbitrator shall be in writing and shall be final and binding upon the parties to this Agreement, the employe or employes involved in the grievance, and the Local representing the bargaining unit in which the grievance arose.

G. The following procedures (not covered by the Rules of the American Arbitration Association referred to in Paragraph C. of this Section) are hereby agreed upon as follows:

(1) A copy of any document furnished to the arbitrator by either party shall also be furnished simultaneously to the other party. If no copy of a document furnished at the hearing is available, a copy will be prepared and furnished to the other party as soon as practicable.

(2) In the event the arbitrator requests the parties

to supply him with a stenographic record of the arbitration proceeding, the parties shall equally divide the cost of one copy for him.

(3) Unless otherwise agreed upon, an arbitration proceeding hereunder shall include only grievances arising from the same plant or identical grievances arising from two or more plants. When an arbitration proceeding includes several grievances arising from the same plant, any identical grievances arising from another plant or plants may also be included.

SECTION XV—BULLETIN BOARDS

The Company will permit the use of factory bulletin boards for the purpose of posting Local notices or other information of interest to members of the Union at the various units, provided that all such notices will be subject to the local Management's approval and arrangements made by the local Management for posting.

SECTION XVI—JURY DUTY

A. When called for jury duty, hourly paid employes will be reimbursed for the difference between the amount paid for such service, not including transportation allowance, and an amount equal to the basic scheduled hours in the period involved times the average earned rate for the preceding calendar quarter. No reimbursement of wages will be made for jury service during furloughs or days that would have been furloughs.

B. Salary paid employes will be paid their regular salary for such period, but will be expected to report for their regular duties when temporarily excused from attendance at court.

SECTION XVII—MILITARY SERVICE

A. Employes drafted into military service will be granted a military leave of absence. The leave of absence

will cover the period of such required military service and will be considered as continuous employment.

B. The employe must apply for re-employment within ninety (90) days from the date of honorable discharge (or the termination of the required period of military service). An employe so applying will be reinstated in his former position, or a position in the bargaining unit which he left on the basis of his seniority under the provisions of this Agreement, providing the employe complies with the following conditions:

1. Application for reinstatement is made within the time period provided above.

2. Official discharge papers are presented.

C. Employes reporting, as provided for in the above provision, who are not qualified to perform the duties of their former position will be given special consideration and local Management will endeavor to place them on suitable jobs.

D. An employe so reinstated will be entitled to participate in insurance and other benefits on the same basis as other employes returning from leave of absence.

SECTION XVIII—MODIFICATION

1. This Agreement expresses the understanding of the parties in respect to matters deemed by them to be Company-wide and generally applicable to the various collective bargaining units, and it will not be changed, modified or varied except by a written instrument signed by duly authorized agents of the parties hereto, and any negotiations relating to proposed changes in such provisions will be carried on between representatives as outlined in Section II.

2. All agreements made locally, other than agreements as to settlement of specific grievances, shall be embodied in local supplements to this Agreement, agreed upon by the respective Locals and local Managements. Such local

supplements shall be in writing and shall cover the procedures for administering the provisions contained in this Agreement and other items of collective bargaining not Company-wide in character and generally applicable to the various collective bargaining units.

3. The parties acknowledge that all agreements arrived at by them during the negotiations concluded by Supplement VII to this Agreement are set forth herein (except to the extent they are set forth in the amended Pension and Insurance Agreement referred to in Paragraph 4 of Supplement I hereto or are contained or referred to in the Strike Settlement Agreement executed contemporaneously with such Supplement VII). Therefore, except as hereinafter specifically provided in this Section XVIII, the Company and the Union, for the life of this Agreement, each voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated, to bargain collectively with respect to any subject or matter referred to or covered in this Agreement, or with respect to any subjects or matters not specifically referred to or covered in this Agreement which were discussed during the negotiations of this Agreement and the Supplements hereto.

4. The Local and local Management at each location will, immediately after the execution of Supplement VII to this Agreement, enter into or continue local negotiations for the purpose of concluding local supplements to this Agreement covering items which have been customarily included in local supplements at the respective locations. Should the Local and local Management fail to reach agreement on the terms of such a local supplement after having bargained on the matter in good faith, both parties shall be free to exercise any rights they may have, with respect to the bargaining unit involved only, without regard to the limitations contained in Section VI of this Agreement.

5. All existing local supplements, and those negotiated after the date of Supplement VII, shall be extended to October 15, 1960, subject to the last sentence of Section XIX B. The Company and the Union agree that neither of them nor any Local will request consideration of any proposed changes in or additions to any local supplement to this Agreement, including any general wage or salary adjustments, except as hereinafter provided in this Paragraph 5 and hereafter in Paragraph 7.

(a) Each Local wage supplement shall be reopenable upon written request of either the Local or local Management, after August 14, 1956 and before January 1, 1960, except that an individual local wage supplement is not to be reopened more frequently than once each twelve (12) months by each party, measuring the time from the date of the previous written request of such party. A conference will take place between the Local and local Management within fifteen (15) days from the date of the request for the purpose of beginning negotiations thereon. If, upon any such reopening, settlement is not reached within thirty (30) days after the first meeting, the right to strike or lockout may be exercised at any time within the succeeding thirty (30) days, but written notice thereof will be required at least fifteen (15) days before the beginning of the strike or lockout, which notice may be given during or after the initial negotiating period of thirty (30) days. In the event agreement for changes is not reached as a result of such reopening, the local wage supplement shall continue in effect unchanged.

(b) Upon written request, the Local Union and local Management may reopen local non-wage supplements at any time after November 1, 1957.

Negotiations regarding such requests shall begin within fifteen (15) days from the date of receiving each request. In the event an agreement is not reached regarding proposed changes in such supplements, they shall continue without change. The Local Union and the local Management may not strike or lockout in the event of failure to arrive at agreement on proposed changes.

6. Notwithstanding any other provisions of this Agreement, the parties may reopen this Agreement as follows:

A. Either party may reopen the Agreement by giving written notice to the other party not more than sixty (60) days nor less than thirty (30) days prior to October 1, 1957, for the purpose of considering proposals for changes in, or additions to, the non-economic provisions of this Agreement. If such notice is given, collective bargaining negotiations shall commence within fifteen (15) days from the receipt of the written request and shall be concluded not later than October 31, 1957, unless extended by mutual agreement. In the event agreement is not reached, the Union shall not have the right to strike nor the Company to lockout, and the Agreement shall continue unchanged except with respect to those changes agreed upon.

B. The Union may also reopen this Agreement not more than sixty (60) days nor less than thirty (30) days prior to October 1, 1958 for the purpose of considering proposals for contracting with regard to matters relating to employment security which may be submitted by either the Union or the Company. If such notice is given, collective bargaining negotiations shall commence within fifteen (15) days from the date of receipt of notice. In the event the parties fail to agree concerning such proposals by October 15, 1958, the Union shall

thereafter have the right to strike in support of its proposals without violating Section VI or any other provision of this Agreement, but this Agreement and all local supplements hereto shall continue in effect.

7. Except as hereinbefore provided in this Section XVIII, the Company and the Union agree that neither of them, nor any Locals, will request consideration of any proposed changes in or additions to this Agreement or any local supplement to this Agreement, including any general wage or salary adjustments (either locally or Company-wide) before August 15, 1960. If this Agreement continues in effect for any subsequent contract term or terms beginning on or after October 15, 1960, the provisions of the last sentence above shall apply (substituting the year to which this Agreement is renewed for the figures "1960" wherever they appear). When any such request is received, a conference will take place within fifteen (15) days for the purpose of considering it.

8. If the parties do not reach agreement prior to October 15, 1960, with respect to any requested contractual changes or additions or wage and salary adjustments submitted on or after August 15, 1960, or if the parties do not reach agreement prior to the end of any subsequent contract term, with respect to any requested contractual changes or additions or wage and salary adjustments submitted on or after August 15 of such subsequent contract term, the Union may strike after the beginning of the next succeeding contract term in support of any such requests made by it. Such strike shall not be a violation of Section VI or any other provision of this Agreement, but either party may, upon not less than one (1) day's written notice given to the other during such strike, thereupon terminate this Agree-

ment and all of the supplements and local supplements thereto.

9. The foregoing procedure outlined in paragraph 8, shall apply with respect to unresolved issues involving local supplements at the end of the contract term ending October 15, 1960 or any subsequent contract term, except that the right to strike shall be limited to the bargaining unit or units involved in the dispute, and either the Company or the Union shall have the right to terminate this Agreement and all local supplements insofar as they apply to such bargaining unit or units upon giving the other party not less than three (3) days' written notice of such termination during the continuation of such strike.

SECTION XIX—TERMINATION

A. This Agreement constitutes the Complete Agreement referred to in Section XX—Termination of the Partial Agreement heretofore entered into between the parties as of July 14, 1950, and incorporates, continues, and extends such Partial Agreement except as modified herein. This Agreement having been in full force and effect for a period of two years, and having thereafter been renewed and extended, is further extended and renewed until October 15, 1960, and shall continue and remain in full force and effect from year to year thereafter (such period ending October 15, 1960, and such succeeding periods of one year being sometimes referred to herein as a "contract term"), provided that either party may terminate this Agreement as of midnight, October 14, 1960, or at the end of any succeeding contract term, by giving the other party written notice of such termination at least sixty (60) days before the termination date.

B. Upon termination of this Agreement, all local supplements to this Agreement shall automatically

also terminate. Any such local supplement may also be terminated by any party thereto as of midnight October 14, 1960, or midnight of October 14 of any subsequent contract year during the life of this Agreement, by giving at least sixty (60) days prior written notice to the other party or parties. In addition to the foregoing provisions for termination, which shall apply to all such local supplements, any local supplement or part thereof may also be terminated in accordance with any special termination provision that may be negotiated locally by local Management and the Local and specifically stated in such local supplement.

WESTINGHOUSE ELECTRIC CORPORATION

By *Tom Turner*

INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, A.F.L.-C.I.O.

By *James B. Carey*

By *Michael F. Fitzpatrick*

SUPPLEMENT I

Dated the 1st Day of October, 1950 Supplement to Agreement Dated as of the 1st Day of October, 1950 Between Westinghouse Electric Corporation and International Union of Electrical, Radio & Machine Workers (C.I.O.)

1. General Wage Increase

The Company agrees to grant a general wage increase to all hourly paid employes covered by this Agreement of 10¢ per hour effective as of September 18, 1950. This general increase is to be applied for all purposes such as overtime, guaranteed rates, hiring rates, vacations, and night turn bonus, but not for the payment of incentive earnings to incentive workers. The application of the general wage increases granted as of May 9, 1946, April 1, 1947, and June 11, 1948, will continue in effect without change—that is, there will be no change in the calculation and payment of incentive earnings to incentive workers or in the calculation and payment of night turn bonus to incentive workers and dayworkers.

2. General Salary Increase

The Company agrees to grant a general salary increase to all salaried employes covered by this Agreement on a forty (40) hour weekly schedule of $4.00 per week (in the case of employes paid weekly) and $17.35 per month (in the case of employes paid monthly) effective as of September 18, 1950. Proportionately smaller increases will be granted to employes on a weekly schedule of less than forty (40) hours. The maximums of salaried key sheet classifications on a forty (40) hour basis will be increased

by $4.00 in the case of employes paid weekly, and $17.35 in the case of employes paid monthly (with proportionately smaller increases in the maximums of salaried key sheet classifications on less than a forty (40) hour basis). The minimum of salaried key sheet classifications will be increased by such lesser amounts as will retain the same percentage ratios of minimums to maximums as existed before the above-mentioned increases in the maximums, respectively.

3. Special Increases

The Company, in addition to the general wage and salary increase specified above, agrees to establish a special fund consisting of one cent (1¢) per hour for each of the total number of hourly employes and the total number of salaried employes covered by this Agreement who were on the active roll during the third payroll period of September, 1950 (or during the month of September in the case of employes paid monthly). Such fund will be used for the purpose of eliminating inequities by granting additional increases in the key sheet rates of certain jobs and in the wages or salaries of employes covered by this Agreement working on such jobs. Having determined the aggregate amount of the fund, as above provided, the fund shall be distributed in the following manner:

(a) Each local Management and each Local will make recommendations to their respective headquarters.

(b) The fund shall be distributed among the various bargaining units covered by this Agreement by a committee of the Company and a committee of the Union, each committee not to exceed three members.

(c) The amount distributed to each bargaining unit, as provided in sub-paragraph (b) above, shall then be distributed as agreed upon between local Management and the Local involved.

(d) The adjustments agreed upon shall be effective as of October 1, 1950.

(e) It is the intention of the parties hereto to complete their agreements for the distribution of the fund on or before November 15, 1950.

4. All matters concerning pensions and social insurance are provided for in the Pension and Insurance Agreement entered into between the parties as of October 1, 1950.

5. This Agreement, including this Supplement I, is conditioned upon acceptance and ratification by the Union and by the Locals listed in the Appendix attached hereto, and the furnishing of evidence thereof to the Company, all as has been mutually agreed upon between the Company and the Union.

SUPPLEMENT II

Dated the 1st Day of June, 1951
Supplement to Agreement Dated as of the 1st Day of October, 1950
Between
Westinghouse Electric Corporation
and
International Union of Electrical, Radio and Machine Workers (C.I.O.)

1. General Wage and Salary Increase

(a) Subject to sub-paragraph (b) of this Paragraph 1, the Company agrees to grant a general wage increase to all hourly-paid employes covered by this Agreement of nine cents (9¢) per hour and a general salary increase to all salaried employes covered by this Agreement, on a forty (40) hour weekly schedule, of $3.60 per week (in the case of employes paid weekly) and $15.60 per month (in the case of employes paid monthly), such general wage and salary increase to be effective as of April 16, 1951.

(b) The general wage and salary increase referred to in sub-paragraph (a) above shall not become payable until the Company has received any approvals from governmental stabilization authorities which are required by the Company. If the Company has not placed such general increase in effect on or before July 2, 1951, all of the provisions of this Paragraph 1, except this and the following sentence, shall be deemed terminated, and, at the request of either party, negotiations on the subject of a general increase in wages and salaries (as those terms are defined in Paragraph 5 of Section XVIII of this Agreement) shall be resumed. If no agreement on such subject has been reached by July 16, 1951, the Union may thereafter strike in support of its demands without violating Section VI or

any other provision of this Agreement, and if such a strike is called, the Union shall be deemed to have complied fully with the requirements of the National Labor Relations Act, as amended, and particularly Section 8 (d) thereof.

(c) The general wage increase is to be applied for all purposes such as overtime, guaranteed rates, hiring rates, vacations, and night turn bonus, but not for the payment of incentive earnings to incentive workers. The application of the general wage increases granted as of May 9, 1946, April 1, 1947, June 11, 1948 and September 18, 1950, will continue in effect without change—that is, there will be no change in the calculation and payment of incentive earnings to incentive workers or in the calculation and payment of night turn bonus to incentive workers and dayworkers.

(d) Proportionately smaller salary increases than those referred to in sub-paragraph (a) above will be granted to employes on a weekly schedule of less than forty (40) hours. The maximums of salaried key sheet classifications on a forty (40) hour basis will be increased by $3.60 in the case of employes paid weekly, and $15.60 in the case of employes paid monthly (with proportionately smaller increases in the maximums of salaried key sheet classifications on less than a forty (40) hour basis). The minimums of salaried key sheet classifications will be increased by such lesser amounts as will retain the same percentage ratios of minimums to maximums as existed before the above-mentioned increases in the maximums, respectively.

2. Union Security

The Company and the Union agree to add a new Section to the Agreement and immediately following SECTION VI, to be designated as "SECTION VI-A—UNION SHOP", reading as follows:

(The balance of the Union Security provision is not reprinted here since the provision has been incorporated in the Agreement.)

3. Extension of Contract

The Company and the Union agree that the dates July 1, 1951, August 1, 1951, and October 1, 1951, wherever they appear in SECTION XVIII—MODIFICATION, shall, effective immediately, be changed to July 1, 1952, August 1, 1952, and October 1, 1952, respectively; and that SECTION XIX of the Agreement shall, effective immediately, be amended to read as follows:

(The balance of the provision is not reprinted here since the provision has been incorporated in the Agreement).

4. 1952 Reopening Provisions

These reopening provisions were not renewable and by their terms, ceased to exist after April 30, 1952.

5. General Provisions

This Supplement II contains all of the provisions agreed upon as a result of the April, 1951, reopening provided for in SECTION XVIII of the Agreement, and, except as modified herein, all provisions of the Agreement shall remain in full force and effect. This Supplement II shall become binding upon the parties upon its execution by representatives of the Company and of the Union.

Dated and signed June 1, 1951.

WESTINGHOUSE ELECTRIC CORPORATION

By *Tom Turner*

INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, C.I.O.

By *James B. Carey*

By *Michael F. Fitzpatrick*

SUPPLEMENT III

Dated the 21st Day of December, 1951
Supplement to Agreement, Including Supplement I thereto, Dated as of the 1st Day of October, 1950, as Modified by Supplement II Dated the 1st Day of June, 1951

Between

Westinghouse Electric Corporation

and

International Union of Electrical, Radio and Machine Workers (C.I.O.)

1. General Wage and Salary Increase

(a) Subject to Section 4, General Provisions, of this Supplement the Corporation agrees to grant a general wage increase to all hourly paid employes covered by this Agreement in accordance with the following tabulation:

Based on Guaranteed Hourly Rate	Increase
to and incl. $1.40	$.050
$1.405 to and incl. 1.53	.055
1.535 to and incl. 1.66	.060
1.665 to and incl. 1.79	.065
1.795 to and incl. 1.92	.070
1.925 to and incl. 2.05	.075
2.055 to and incl. 2.18	.080
2.185 to and incl. 2.31	.085
2.315 to and incl. 2.44	.090
2.445 to and incl. 2.57	.095
Over 2.57	.100

(b) Subject to Section 4, General Provisions, of this Supplement the Corporation agrees to grant a general

salary increase to all salaried employes covered by this Agreement on a forty (40) hour weekly schedule in accordance with the following tabulation:

Weekly Salary Rate 40 Hour Week		Increase Per Week
to and incl.	$ 56.00	$2.00
$ 56.01 to and incl.	62.00	2.20
62.01 to and incl.	68.00	2.40
68.01 to and incl.	74.00	2.60
74.01 to and incl.	80.00	2.80
80.01 to and incl.	86.00	3.00
86.01 to and incl.	92.00	3.20
92.01 to and incl.	98.00	3.40
98.01 to and incl.	104.00	3.60
104.01 to and incl.	110.00	3.80
Over	110.00	4.00

Equivalent increases will be granted to employes paid monthly. Proportionately smaller increases than those shown in the foregoing tabulation will be granted to salary employes on a weekly schedule of less than 40 hours.

(c) The general wage and salary increase referred to in sub-paragraphs (a) and (b) above shall be effective as of November 1, 1951 for all employes on the roll and covered by this Agreement on October 31, 1951.

(d) The general wage increase is to be applied for all purposes such as overtime, guaranteed rates, hiring rates, vacations, and night turn bonus, but not for payment of incentive earnings to incentive workers. The application of the general wage increases granted as of May 16, 1946, May 1, 1947, June 11, 1948, September 18, 1950, and April 16, 1951 will continue in effect without change—that is, there will be no change in the calculation and payment of incentive earnings to incentive workers or in the calculation and payment of night turn bonus to incentive workers and dayworkers. Employes hired on or after November 1, 1951 will be paid in line with adjusted keysheets.

(e) The minimums and maximums of salaried keysheets on a forty (40) hour basis will be increased by the amount

shown in the tabulation in sub-paragraph (b) above with proportionately smaller increases in cases of salary keysheets on a weekly basis of less than forty (40) hours. Salaried employes hired on or after November 1, 1951 will be paid in line with adjusted keysheets.

(f) In the event that the application of the salary increase provisions of this Paragraph 1 result in individual base rates not in conformity with the provisions of Section VIII, Paragraphs 6 d. and e. of the Agreement, such base rates will be increased by such amounts as will place them in conformity with such provisions.

2. 1952 Reopening Provisions

These reopening provisions were not renewable and by their terms, ceased to exist after April 30, 1952.

3. Contract Changes (Incorporated in body of Agreement)

4. General Provisions

(a) The general wage and salary increase provided in sub-paragraphs (a) and (b) of Section 1 shall become payable, and the keysheet adjustments provided for will be made, when the Company has received from the Wage Stabilization Board such necessary approval as is required by the wage stabilization regulations. The change in vacation benefits provided in sub-paragraphs (a) and (b) of Section 3 above is also conditional upon receipt of necessary approval from the Wage Stabilization Board. In the event that the Wage Stabilization Board approves only a portion of the economic benefits referred to in this sub-paragraph, the Company will place such benefits in effect to the extent that they have been approved, and the parties will promptly meet for the purpose of negotiating with respect to a legally permissible method whereby an adjustment in wages and salaries and/or vacations applicable to all employes covered by this Supplement can be made by the Company in lieu of, but not in excess of, any increase provided for by that part of this Supplement

which is not approved. Section VI of the National Agreement shall apply during such negotiations.

(b) On the basis of negotiations held between the Company and the Union, prior to the date hereof concerning the wage, vacation, reopening and termination provisions of the National Agreement dated October 1, 1950 as modified, which negotiations have been concluded by this agreement, all provisions of the National Agreement and Supplement II shall remain in full force and effect, except as modified herein. This Supplement III shall become binding upon the parties upon its execution by representatives of the Company and of the Union.

Dated and signed December 21, 1951.

WESTINGHOUSE ELECTRIC CORPORATION

By *Tom Turner*

INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, C.I.O.

By *James B. Carey*

By *Michael F. Fitzpatrick*

SUPPLEMENT IV

Dated the 25th Day of September, 1952 Supplement to Agreement Dated as of the 1st Day of October, 1950

Between

Westinghouse Electric Corporation

and

International Union of Electrical, Radio and Machine Workers (C.I.O.)

1. General Wage and Salary Increase

(a) Subject to paragraph (d) of this Section 1, the Company agrees to grant a general wage increase to all hourly paid employes covered by this Agreement, except those employes specifically referred to in paragraph (c) of this Section 1. Said general increase will be in accordance with the following tabulation and will be computed on their individual base rates for day workers and on their individual guaranteed rates for incentive workers:

Base or Guaranteed Hourly Rate	Increase Per Hour
to and incl. $1.27	$.075
$1.275 to and incl. 1.40	.080
1.405 to and incl. 1.53	.085
1.535 to and incl. 1.66	.090
1.665 to and incl. 1.79	.095
1.795 to and incl. 1.92	.100
1.925 to and incl. 2.05	.105
2.055 to and incl. 2.18	.110
2.185 to and incl. 2.31	.115
2.315 to and incl. 2.44	.120
2.445 to and incl. 2.57	.125
Over 2.57	.130

(b) Subject to paragraph (d) of this Section 1, the Company agrees to grant a general salary increase to all salaried employes covered by this Agreement who are on a forty (40) hour weekly schedule, except those employes specifically referred to in paragraph (c) of this Section 1, in accordance with the following tabulation:

Weekly Salary Rate 40 Hour Week		Increase Per Week
to and incl.	$ 50.80	$ 3.00
$ 50.81 to and incl.	56.00	3.20
56.01 to and incl.	61.20	3.40
61.21 to and incl.	66.40	3.60
66.41 to and incl.	71.60	3.80
71.61 to and incl.	76.80	4.00
76.81 to and incl.	82.00	4.20
82.01 to and incl.	87.20	4.40
87.21 to and incl.	92.40	4.60
92.41 to and incl.	97.60	4.80
97.61 to and incl.	102.80	5.00
Over	102.80	5.20

Monthly Salary Rate 40 Hour Week		Increase Per Month
to and incl.	$220.15	$13.00
$220.16 to and incl.	242.65	13.85
242.66 to and incl.	265.20	14.75
265.21 to and incl.	287.75	15.60
287.76 to and incl.	310.25	16.45
310.26 to and incl.	332.80	17.35
332.81 to and incl.	355.35	18.20
355.36 to and incl.	377.85	19.05
377.86 to and incl.	400.40	19.95
400.41 to and incl.	422.95	20.80
422.96 to and incl.	445.45	21.65
Over	445.45	22.55

NOTE: Proportionately smaller increases than those shown on the foregoing tabulation will be granted to salaried employes on a weekly schedule of less than forty (40) hours.

(c) Because of the general wage and salary increase already received by the employes at Metuchen and Union City as of May 1, 1952 the general wage and salary increase for employes at those locations shall, subject to paragraph (d) of this Section 1, be in accordance with the following tabulations, instead of those in paragraphs (a) and (b) above:

Base or Guaranteed Hourly Rate		Increase Per Hour
to and incl.	$1.210	$.065
$1.215 to and incl.	1.285	.060
1.290 to and incl.	1.415	.065
1.420 to and incl.	1.545	.070
1.550 to and incl.	1.675	.075
1.680 to and incl.	1.715	.080
1.720 to and incl.	1.810	.075
1.815 to and incl.	1.940	.080
1.945 to and incl.	2.070	.085
2.075 to and incl.	2.200	.090
2.205 to and incl.	2.220	.095
2.225 to and incl.	2.335	.090
2.340 to and incl.	2.465	.095
2.470 to and incl.	2.595	.100
Over	2.595	.105

Weekly Salary Rate 40 Hour Week		Increase Per Week
to and incl.	$ 48.40	$ 2.60
$ 48.41 to and incl.	51.40	2.40
51.41 to and incl.	56.60	2.60
56.61 to and incl.	61.80	2.80
61.81 to and incl.	67.00	3.00
67.01 to and incl.	68.60	3.20
68.61 to and incl.	72.40	3.00
72.41 to and incl.	77.60	3.20
77.61 to and incl.	82.80	3.40
82.81 to and incl.	88.00	3.60
88.01 to and incl.	88.80	3.80
88.81 to and incl.	93.40	3.60
93.41 to and incl.	98.60	3.80
98.61 to and incl.	103.80	4.00
Over	103.80	4.20

Monthly Salary Rate 40 Hour Week		Increase Per Month
to and incl.	$209.75	$11.25
$209.76 to and incl.	222.75	10.40
222.76 to and incl.	245.25	11.25
245.26 to and incl.	267.80	12.15
267.81 to and incl.	290.35	13.00
290.36 to and incl.	297.60	13.85
297.61 to and incl.	313.70	13.00
313.71 to and incl.	336.25	13.90
336.26 to and incl.	358.80	14.75
358.81 to and incl.	381.30	15.60
381.31 to and incl.	384.45	16.50
384.46 to and incl.	404.75	15.60
404.76 to and incl.	427.30	16.45
427.31 to and incl.	449.80	17.30
Over	449.80	18.20

NOTE: Proportionately smaller increases than those shown on the foregoing tabulation will be granted to salaried employes on a weekly schedule of less than forty (40) hours.

(d) The general wage and salary increase referred to in Sections (a), (b) and (c) above shall not become payable until the Company has received such approvals from Governmental authorities as are required. In the event that Governmental approval of only a portion of such general wage and salary increase is obtained, the Company will grant said increase to the extent approved and, at the request of either party, negotiations will be held for the purpose of arriving at a legally permissible method whereby an adjustment in wages and salaries applicable to all employes covered by this Agreement can be made in lieu of, but not in excess of, the unapproved amount of the general wage and salary increase set out above. During any such negotiations, Section VI of this Agreement shall apply.

(e) The general wage and salary increase as shown in the above tabulations will be effective as of October 1, 1952, for all employes on the roll and covered by this Agreement on the date any necessary Governmental approvals are received by the Company; if an individual's

rate has changed between October 1, 1952, and the date approval is received, his retroactive payment will be adjusted accordingly.

(f) The general wage and salary increase will be applied for all purposes, such as overtime, guaranteed rates, hiring rates, vacations, and night turn bonus, but not for the payment of incentive earnings to incentive workers. The application of general wage increases granted as of May 16, 1946, May 1, 1947, June 11, 1948, September 18, 1950, April 16, 1951, and November 1, 1951, will continue in effect without change—that is, there will be no change in the calculation and payment of incentive earnings to incentive workers or in the calculation and payment of night turn bonus to incentive workers and dayworkers.

(g) The minimums and maximums of salaried key-sheets on a forty (40) hour basis will be increased by the applicable amount shown in the tabulations above, with proportionately smaller increases in cases of salary key-sheets on a weekly basis of less than forty (40) hours.

(h) In the event application of the salary increase provisions outlined herein results in individual base rates not in conformity with the provisions of Section VIII, paragraphs 6 (d) and (e) of this Agreement, such base rates will be increased by amounts that will place them in conformity with such provisions.

2. Contract Changes (Incorporated in body of Agreement)

3. The Appendix is amended by making the deletion and additions that are necessary by rearranging and renumbering all units into alphabetical order as follows: (Changes incorporated in Appendix)

4. General Provisions

On the basis of negotiations held between the Company and the Union, prior to the date hereof, pursuant to the 1952 reopening provisions of Supplement III and the provisions of Section XVIII of the National Agreement dated

October 1, 1950, as modified, which negotiations have been concluded by this Agreement, all provisions of such National Agreement, as modified by Supplements II and III, shall remain in full force and effect except as modified herein. This Supplement IV shall become binding upon the parties upon its execution by representatives of the Company and of the Union.

Dated and signed September 25, 1952.

WESTINGHOUSE ELECTRIC CORPORATION

BY *R. D. Blasier*

INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, C.I.O.

By *James B. Carey*

By *Robert H. Nellis*

SUPPLEMENT V

Dated as of the 30th Day of June, 1953 Supplement to Agreement Dated as of the 1st Day of October, 1950

Between

Westinghouse Electric Corporation

and

International Union of Electrical, Radio and Machine Workers (C.I.O.)

1. Wages and Salary Adjustments

(a) The Company agrees to grant a general wage increase to all hourly paid employes covered by this Agreement, computed on their individual base rates for day workers and on their individual guaranteed rates for incentive workers, in accordance with the following tabulation:

Base or Guaranteed Hourly Rate	Increase Per Hour
to and incl. $1.205	$.03
$1.210 to and incl. 1.85	.04
1.855 to and incl. 1.90	.05
1.905 to and incl. 1.95	.06
1.955 to and incl. 2.00	.07
2.005 to and incl. 2.05	.08
2.055 to and incl. 2.10	.09
2.105 to and incl. 2.15	.10
Over 2.15	.11

(b) The Company agrees to grant a general salary increase to all salaried employes covered by this Agreement

who are on a forty (40) hour weekly schedule, in accordance with the following tabulation:

Weekly Salary Rate	Increase Per Week
to and incl. $48.39	$1.20
$48.40 to and incl. 74.19	1.60
74.20 to and incl. 76.19	2.00
76.20 to and incl. 78.19	2.40
78.20 to and incl. 80.19	2.80
80.20 to and incl. 82.19	3.20
82.20 to and incl. 84.19	3.60
84.20 to and incl. 86.00	4.00
Over 86.00	4.40

Monthly Salary Rate	Increase Per Month
to and incl. $209.72	$ 5.20
$209.73 to and incl. 321.52	6.95
321.53 to and incl. 330.18	8.65
330.19 to and incl. 338.85	10.40
338.86 to and incl. 347.52	12.15
347.53 to and incl. 356.18	13.85
356.19 to and incl. 364.85	15.60
364.86 to and incl. 372.66	17.35
Over 372.66	19.00

NOTE: Proportionately smaller increases than those shown on the foregoing tabulation will be granted to salaried employes on a weekly schedule of less than forty (40) hours.

(c) The wage and salary increases referred to in subparagraphs (a) and (b) above shall be effective as of July 1, 1953 for all employes on the roll covered by this Agreement on that date, and will be applied for all purposes, such as overtime, guaranteed rates, hiring rates, vacation,

and night turn bonus, but not for the payment of incentive earnings to incentive workers. The application of the general wage increases granted as of May 16, 1946, May 1, 1947, June 11, 1948, September 18, 1950, April 16, 1951, November 1, 1951 and October 1, 1952 will continue in effect without change—that is, there will be no change in the calculation and payment of incentive earnings to incentive workers or in the calculation and payment of night turn bonus to incentive workers and day workers.

(d) The minimums and maximums of salaried keysheets on a forty (40) hour basis will be increased by the applicable amount shown in the tabulations above, with proportionately smaller increases in cases of salary keysheets on a weekly basis of less than forty (40) hours.

(e) In the event application of the salary increase provisions outlined herein results in individual base rates not in conformity with provisions of Section VIII, paragraphs 6 d. and e. of this Agreement, such base rates will be increased by amounts that will place them in conformity with such provisions.

2. Contract Changes (effective immediately—incorporated in body of Agreement)

3. General Provisions

(a) On the basis of negotiations held between the Company and the Union, prior to the date hereof, pursuant to the April, 1953 reopening provisions of Supplement IV as incorporated in Section XVIII of the National Agreement dated October 1, 1950, as modified, which negotiations have been concluded by this Agreement, all provisions of such National Agreement, as modified by Supplements II, III and IV, shall remain in full force and effect except as modified herein.

(b) This Supplement V shall become binding upon the parties upon its execution by representatives of the Company and of the Union.

Dated and signed August 24, 1953, effective as of June 30, 1953.

WESTINGHOUSE ELECTRIC CORPORATION

By R. D. Blasier
Vice President

By C. C. Frame
Director of Labor Relations

INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS (C.I.O.)

By James B. Carey
President

By Robert Nellis
Chairman, Westinghouse Conference Board

SUPPLEMENT VI

Dated the 10th Day of September, 1954 Supplement to Agreement Dated as of the 1st Day of October, 1950

Between

Westinghouse Electric Corporation

and

International Union of Electrical, Radio and Machine Workers (C.I.O.)

1. Wages and Salary Adjustments

(a) The Company agrees to grant a general wage increase to all hourly paid employes covered by this Agreement computed on the individual base rates of dayworkers and upon both the individual base rates and individual guaranteed rates of incentive workers in accordance with the following tabulation:

Daywork Base Hourly Rate or Incentive Guaranteed Hourly Rate	Increase Per Hour
to and incl. $1.70	$.035
$1.705 to and incl. 1.90	.040
1.905 to and incl. 2.10	.045
2.105 to and incl. 2.30	.050
2.305 to and incl. 2.50	.055
2.505 to and incl. 2.70	.060
2.705 to and incl. 2.90	.065
Over 2.90	.070

(b) The Company agrees to grant a general salary increase to all salaried employes covered by this Agreement who are on a forty (40) hour weekly schedule, in accordance with the following tabulation:

Weekly Salary Rate	Increase Per Week
to and incl. $ 68.00	$ 1.40
$ 68.01 to and incl. 76.00	1.60
76.01 to and incl. 84.00	1.80
84.01 to and incl. 92.00	2.00
92.01 to and incl. 100.00	2.20
100.01 to and incl. 108.00	2.40
108.01 to and incl. 116.00	2.60
Over 116.00	2.80

Monthly Salary Rate	Increase Per Month
to and incl. $294.65	$ 6.05
$294.66 to and incl. 329.30	6.95
329.31 to and incl. 364.00	7.80
364.01 to and incl. 398.65	8.65
398.66 to and incl. 433.30	9.55
433.31 to and incl. 468.00	10.40
468.01 to and incl. 502.65	11.25
Over 502.65	12.15

NOTE: Proportionately smaller increases than those shown on the foregoing tabulation will be granted to salaried employes on a weekly schedule of less than forty (40) hours.

(c) The wage and salary increases referred to in subparagraphs (a) and (b) above shall be effective as of July 1, 1954, for all employes on the roll covered by this Agreement on that date, and will be applied for all purposes, such as overtime, guaranteed rates, hiring rates, vacation,

night turn bonus and for the payment of incentive earnings to incentive workers. The application of the general wage increases granted as of May 16, 1946, May 1, 1947, June 11, 1948, September 18, 1950, April 16, 1951, November 1, 1951, October 1, 1952 and July 1, 1953 will continue in effect without change—that is, there will be no change in the calculation of payment of incentive earnings to incentive workers or in the calculation and payment of night turn bonus to incentive workers and dayworkers.

(d) The minimums and maximums of salaried keysheets on a forty (40) hour basis will be increased by the applicable amount shown in the tabulations above, with proportionately smaller increases in cases of salary keysheets on a weekly basis of less than forty (40) hours.

(e) In the event application of the salary increase provisions outlined herein results in individual base rates not in conformity with provisions of Section VIII, paragraphs 6d. and e. of this Agreement, such base rates will be increased by amounts that will place them in conformity with such provisions.

2. Contract Changes (effective immediately) (incorporated in body of Agreement)

3. General Provisions

(a) On the basis of negotiations held between the Company and the Union, prior to the date hereof, pursuant to the modification provisions contained in Section XVIII of the National Agreement dated October 1, 1950, as modified, which negotiations have been concluded by this Agreement, all provisions of such National Agreement, as modified by Supplements II, III, IV and V shall remain in full force and effect except as modified herein.

(b) This Supplement VI shall become binding upon the parties upon its execution by representatives of the Company and of the Union.

Dated and signed September 10, 1954, effective as of September 10, 1954.

WESTINGHOUSE ELECTRIC CORPORATION

By *R. D. Blasier*
Vice President

By *C. C. Frame*
Director of Labor Relations

INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS (C.I.O.)

By *James B. Carey*
President

By *Robert Nellis*
Chairman
Westinghouse Conference Board

SUPPLEMENT VII

Dated the 20th of March, 1956
Supplement to Agreement Dated as of the 1st Day of October, 1950

Between
Westinghouse Electric Corporation
and
International Union of Electrical, Radio and Machine Workers (AFL-CIO)

1. Wage and Salary Adjustments

(a) Daywork and Salary Increases effective as of the date of this Supplement VII

(1) Hourly Dayworkers

The base rates of all hourly paid daywork employes will be increased in accordance with the following tabulation:

Hourly Paid Employes

Base Rate	Increase Per Hour
to and incl. $1.78 per hr.	0¢
$1.785 to and incl. 1.85 per hr.	.5
1.855 to and incl. 1.92 per hr.	1.
1.925 to and incl. 1.99 per hr.	1.5
1.995 to and incl. 2.06 per hr.	2.
2.065 to and incl. 2.13 per hr.	2.5
2.135 to and incl. 2.20 per hr.	3.
2.205 to and incl. 2.27 per hr.	3.5

Base Rate		Increase Per Hour
$2.275 to and incl.	$2.34 per hr.	4. ¢
2.345 to and incl.	2.41 per hr.	4.5
2.415 to and incl.	2.47 per hr.	5.
2.475 to and incl.	2.53 per hr.	5.5
2.535 to and incl.	2.59 per hr.	6.
2.595 to and incl.	2.65 per hr.	6.5
2.655 to and incl.	2.71 per hr.	7.
2.715 to and incl.	2.77 per hr.	7.5
2.775 to and incl.	2.83 per hr.	8.
2.835 to and incl.	2.89 per hr.	8.5
2.895 to and incl.	2.95 per hr.	9.
2.955 to and incl.	3.01 per hr.	9.5
3.015 to and incl.	3.07 per hr.	10.
3.075 to and incl.	3.14 per hr.	10.5
3.145 to and incl.	3.21 per hr.	11.
3.215 to and incl.	3.28 per hr.	11.5
over	3.28 per hr.	12.

(2) Salary Employes

The base rates of all salaried employes covered by this Agreement who are on a forty (40) hour weekly schedule will be increased in accordance with the following tabulation:

Employes Paid Weekly

Weekly Salary Rate		Increase Per Week
to and incl.	$71.20	0
$71.21 to and incl.	74.00	.20
74.01 to and incl.	76.80	.40
76.81 to and incl.	79.60	.60
79.61 to and incl.	82.40	.80
82.41 to and incl.	85.20	1.00
85.21 to and incl.	88.00	1.20

Weekly Salary Rate		Increase Per Week
$88.01 to and incl.	$ 90.80	$1.40
90.81 to and incl.	93.60	1.60
93.61 to and incl.	96.40	1.80
96.41 to and incl.	98.80	2.00
98.81 to and incl.	101.20	2.20
101.21 to and incl.	103.60	2.40
103.61 to and incl.	106.00	2.60
106.01 to and incl.	108.40	2.80
108.41 to and incl.	110.80	3.00
110.81 to and incl.	113.20	3.20
113.21 to and incl.	115.60	3.40
115.61 to and incl.	118.00	3.60
118.01 to and incl.	120.40	3.80
120.41 to and incl.	122.80	4.00
122.81 to and incl.	125.60	4.20
125.61 to and incl.	128.40	4.40
128.41 to and incl.	131.20	4.60
Over	131.20	4.80

Employes Paid Monthly

Monthly Salary Rate		Increase Per Month
to and incl.	$308.50	$ 0
$308.51 to and incl.	320.64	.85
320.65 to and incl.	332.77	1.75
332.78 to and incl.	344.91	2.60
344.92 to and incl.	357.04	3.45
357.05 to and incl.	369.17	4.35
369.18 to and incl.	381.30	5.20
381.31 to and incl.	393.44	6.05
393.45 to and incl.	405.57	6.95
405.58 to and incl.	417.70	7.80
417.71 to and incl.	428.10	8.65
428.11 to and incl.	438.50	9.55
438.51 to and incl.	448.90	10.40

Monthly Salary Rate			Increase Per Month
$448.91	to and incl.	$459.30	$11.25
459.31	to and incl.	469.70	12.15
469.71	to and incl.	480.10	13.00
480.11	to and incl.	490.50	13.85
490.51	to and incl.	500.89	14.75
500.90	to and incl.	511.29	15.60
511.30	to and incl.	521.69	16.45
521.70	to and incl.	532.09	17.35
532.10	to and incl.	544.22	18.20
544.23	to and incl.	556.36	19.05
556.37	to and incl.	568.49	19.95
	Over	568.49	20.80

NOTE: Proportionately smaller increases than those shown in the foregoing tabulations will be granted to salaried employes on a weekly schedule of less than forty (40) hours.

(b) Improvement Increases

(1) Hourly Paid Employes Increase

The guaranteed rates of all hourly incentive workers and dayworkers, after the adjustments provided for in subparagraph (a) (1) above have been made, shall be increased by the applicable amounts and on the effective dates in accordance with the following table. The base rates of incentive workers (which is that portion of the rate on which incentive earnings are computed) shall be increased each year by 3% (3½% on October 13, 1958, and October 12, 1959) of the base rate in effect on October 14, 1955, and rounded to the nearest ½¢, but not in excess of the amount indicated below.

Effective Dates

Amount of Increase	Effective Date of Supplement VII Current Guaranteed Rate	October 15, 1956 Current Guaranteed Rate	October 14, 1957 Current Guaranteed Rate
$ .05	to and incl. $ 1.75	to and incl. $ 1.80	to and incl. $ 1.85
.055	$ 1.755 to and incl. 1.92	$ 1.805 to and incl. 1.975	$ 1.855 to and incl. 2.03
.06	1.925 to and incl. 2.085	1.98 to and incl. 2.145	2.035 to and incl. 2.205
.065	2.09 to and incl. 2.255	2.15 to and incl. 2.32	2.21 to and incl. 2.385
.07	2.26 to and incl. 2.42	2.325 to and incl. 2.49	2.39 to and incl. 2.56
.075	2.425 to and incl. 2.585	2.495 to and incl. 2.66	2.565 to and incl. 2.735
.08	2.59 to and incl. 2.755	2.665 to and incl. 2.835	2.74 to and incl. 2.915
.085	2.76 to and incl. 2.92	2.840 to and incl. 3.005	2.92 to and incl. 3.09
.09	2.925 to and incl. 3.085	3.01 to and incl. 3.175	3.095 to and incl. 3.265
.095	3.09 to and incl. 3.255	3.18 to and incl. 3.35	3.27 to and incl. 3.445
.10	over 3.255	over 3.35	over 3.445

Amount of Increase	October 13, 1958 Current Guaranteed Rate	October 12, 1959 Current Guaranteed Rate
$ .05	to and incl. $ 1.635	to and incl. $ 1.685
.055	$ 1.64 to and incl. 1.78	$ 1.69 to and incl. 1.835
.06	1.785 to and incl. 1.92	1.84 to and incl. 1.98
.065	1.925 to and incl. 2.065	1.985 to and incl. 2.13
.07	2.07 to and incl. 2.205	2.135 to and incl. 2.275
.075	2.21 to and incl. 2.35	2.28 to and incl. 2.425
.08	2.355 to and incl. 2.495	2.43 to and incl. 2.575
.085	2.50 to and incl. 2.635	2.58 to and incl. 2.72
.09	2.64 to and incl. 2.78	2.725 to and incl. 2.87
.095	2.785 to and incl. 2.925	2.875 to and incl. 3.02
.10	2.93 to and incl. 3.065	3.025 to and incl. 3.165
.105	3.07 to and incl. 3.21	3.17 to and incl. 3.315
.11	3.215 to and incl. 3.35	3.32 to and incl. 3.46
.115	3.355 to and incl. 3.495	3.465 to and incl. 3.61
.12	over 3.495	over 3.61

(2) Salary Increases

The base rates of all salaried employes covered by this Agreement who are on a forty (40) hour weekly schedule after the adjustments provided for in subparagraph (a) (2) above have been made shall be increased in the amounts and on the effective dates in accordance with the following tabulation:

Employes Paid Weekly

Effective Dates

Amount of Increase per Week	Effective Date of Supplement VII Current Salary Rate	October 15, 1956 Current Salary Rate	October 14, 1957 Current Salary Rate
$ 2.00	to and incl. $ 70.00	to and incl. $ 72.00	to and incl. $ 74.00
2.20	$ 70.01 to and incl. 76.80	$ 72.01 to and incl. 79.00	$ 74.01 to and incl. 81.20
2.40	76.81 to and incl. 83.40	79.01 to and incl. 85.80	81.21 to and incl. 88.20
2.60	83.41 to and incl. 90.20	85.81 to and incl. 92.80	88.21 to and incl. 95.40
2.80	90.21 to and incl. 96.80	92.81 to and incl. 99.60	95.41 to and incl. 102.40
3.00	96.81 to and incl. 103.40	99.61 to and incl. 106.40	102.41 to and incl. 109.40
3.20	103.41 to and incl. 110.20	106.41 to and incl. 113.40	109.41 to and incl. 116.60
3.40	110.21 to and incl. 116.80	113.41 to and incl. 120.20	116.61 to and incl. 123.60
3.60	116.81 to and incl. 123.40	120.21 to and incl. 127.00	123.61 to and incl. 130.60
3.80	123.41 to and incl. 130.20	127.01 to and incl. 134.00	130.61 to and incl. 137.80
4.00	over 130.20	over 134.00	over 137.80

Amount of Increase Per Week	October 13, 1958 Current Salary Rate			October 12, 1959 Current Salary Rate		
$ 2.00		to and incl.	$ 65.40		to and incl.	$ 67.40
2.20	$ 65.41	to and incl.	71.20	$ 67.41	to and incl.	73.40
2.40	71.21	to and incl.	76.80	73.41	to and incl.	79.20
2.60	76.81	to and incl.	82.60	79.21	to and incl.	85.20
2.80	82.61	to and incl.	88.20	85.21	to and incl.	91.00
3.00	88.21	to and incl.	94.00	91.01	to and incl.	97.00
3.20	94.01	to and incl.	99.80	97.01	to and incl.	103.00
3.40	99.81	to and incl.	105.40	103.01	to and incl.	108.80
3.60	105.41	to and incl.	111.20	108.81	to and incl.	114.80
3.80	111.21	to and incl.	117.00	114.81	to and incl.	120.80
4.00	117.01	to and incl.	122.60	120.81	to and incl.	126.60
4.20	122.61	to and incl.	128.40	126.61	to and incl.	132.60
4.40	128.41	to and incl.	134.00	132.61	to and incl.	138.40
4.60	134.01	to and incl.	139.80	138.41	to and incl.	144.40
4.80		over	139.80		over	144.40

Employes Paid Monthly

Effective Dates

Amount of Increase Per Month	Effective Date of Supplement VII Current Salary Rate	October 15, 1956 Current Salary Rate	October 14, 1957 Current Salary Rate
$ 8.67	to and incl. $303.32	to and incl. $311.99	to and incl. $320.66
9.53	$303.33 to and incl. 332.79	$312.00 to and incl. 342.33	$320.67 to and incl. 351.86
10.40	332.80 to and incl. 361.39	342.34 to and incl. 371.79	351.87 to and incl. 382.19
11.27	361.40 to and incl. 390.86	371.80 to and incl. 402.13	382.20 to and incl. 413.39
12.13	390.87 to and incl. 419.46	402.14 to and incl. 431.59	413.40 to and incl. 443.73
13.00	419.47 to and incl. 448.06	431.60 to and incl. 461.06	443.73 to and incl. 474.06
13.87	448.07 to and incl. 477.52	461.07 to and incl. 491.39	474.07 to and incl. 505.26
14.73	477.53 to and incl. 506.12	491.40 to and incl. 520.86	505.27 to and incl. 535.59
15.60	506.13 to and incl. 534.72	520.87 to and incl. 550.32	535.60 to and incl. 565.92
16.47	534.73 to and incl. 564.19	550.33 to and incl. 580.66	565.93 to and incl. 597.12
17.33	over 564.19	over 580.66	over 597.12

Amount of Increase Per Month	October 13, 1958 Current Salary Rate	October 12, 1959 Current Salary Rate
$ 8.67	to and incl. $283.39	to and incl. $292.06
9.53	$283.40 to and incl. 308.53	$292.07 to and incl. 318.06
10.40	308.54 to and incl. 332.79	318.07 to and incl. 343.19
11.27	332.80 to and incl. 357.93	343.20 to and incl. 369.19
12.13	357.94 to and incl. 382.19	369.20 to and incl. 394.33
13.00	382.20 to and incl. 407.33	394.34 to and incl. 420.33
13.87	407.34 to and incl. 432.46	420.34 to and incl. 446.32
14.73	432.47 to and incl. 456.72	446.33 to and incl. 471.46
15.60	456.73 to and incl. 481.86	471.47 to and incl. 497.46
16.47	481.87 to and incl. 506.99	497.47 to and incl. 523.46
17.33	507.00 to and incl. 531.26	523.47 to and incl. 548.59
18.20	531.27 to and incl. 556.39	548.60 to and incl. 574.59
19.07	556.40 to and incl. 580.66	574.60 to and incl. 599.72
19.93	580.67 to and incl. 605.79	599.73 to and incl. 625.72
20.80	over 605.79	over 625.72

(c) *The Company agrees that hourly keysheets shall be increased by the applicable amounts shown in the tabulations set out above in sub-paragraphs (a) (1) and (b) (1) and that the maximums and minimums of salaried keysheets on a forty (40) hour basis shall be increased by the applicable amounts shown in the tabulations set out above in sub-paragraphs (a) (2) and (b) (2) with proportionately smaller increases in cases of salaried keysheets on a weekly basis of less than forty (40) hours.*

(d) *The wage and salary increases referred to in paragraphs (a) and (b) above will be applied for all purposes, such as overtime, vacations, night turn bonus and group leading. The application of the general wage increases granted as of May 9, 1946; April 1, 1947; June 11, 1948; September 18, 1950; April 16, 1951; November 1, 1951; October 1, 1952; July 1, 1953; and July 1, 1954, will continue in effect without change—that is, there will be no change in the calculation and payment of incentive earnings to incentive workers or in the calculation and payment of night turn bonus to incentive workers and dayworkers.*

(e) *In the event application of the salary increase provisions outlined herein results in individual base rates not in conformity with provisions of Section VIII, paragraphs 6 d. and e. of this Agreement, such base rates will be increased by amounts that will place them in conformity with such provisions.*

2. *Cost-of-living Increase*

(a) *Effective on and after the date of this Supplement VII, and in addition to wage and salary increases set out in sub-section 1 above, a further provision for adjustment will be made under the cost-of-living formula described in this sub-section 2.*

(b) *The term "Index," as hereinafter used, shall*

be the official Consumer's Price Index, published by the U.S. Bureau of Labor Statistics (1947—1949 = 100).

(c) The cost-of-living formula shall be:

For each full one-half (½) point by which the Index at the beginning of each quarter (starting with the Index for April 15, 1956) exceeds the Index figure of 114.9, one (1) cent per hour shall be added to the earnings of hourly employes. The corresponding addition for salary employes on a forty (40) hour weekly schedule shall be forty (40¢) cents per week or $1.73 per month, with proportionately smaller increases for salary employes on a weekly schedule of less than forty (40) hours. Such additional increase shall be excluded from base rates, guaranteed rates and incentive calculations, but shall be included for other pay purposes (such as overtime, night turn bonus, vacation and holiday pay and payment under the "4 hours of work" provision (Section VIII, Paragraph 4). The appropriate increase under sub-section 1. above shall not in any event be reduced if the Index shall in any quarter fall below 114.9.

(d) The cost-of-living formula shall be calculated and applied quarterly, effective for the first pay period commencing after the Index becomes available, beginning with the April 15, 1956 Index, and adjustments as the result thereof will normally be made in May, August, November and February for hourly paid employes and salary employes on a weekly schedule, and in June, September, December and March for salary employes paid monthly.

(e) In the event the Bureau of Labor Statistics shall not issue the appropriate Index on or before the beginning of one of the periods referred to in sub-paragraph 2 (d) above, any adjustment required by such Index shall be effective at the beginning of the first pay period after receipt of such Index.

(f) No adjustment, retroactive or otherwise, shall be made in pay or benefits as a result of any revision which later may be made in the published figures for the Index for any month on the basis of which the cost-of-living calculation shall have been determined.

(g) In the event the Index, in its present form and calculated on the same basis as the Index for October 15, 1955, shall be discontinued or otherwise become unavailable during the term of this Agreement, the parties will promptly undertake negotiations solely with respect to agreeing upon a substitute formula for determining a comparable cost-of-living adjustment, and failing agreement in such negotiations, the Union shall, upon giving ten (10) days' written notice, have the right to strike solely with respect to such issue.

3. Contract Changes

(Effective Immediately). (Incorporated in body of Agreement).

4. General Provisions

(a) On the basis of negotiations held between the Company and the Union, prior to the date hereof, pursuant to the modification provisions outlined in Section XVIII of the National Agreement dated October 1, 1950, as modified, which negotiations have been concluded by this Agreement, all provisions of such National Agreement, as modified by Supplements II, III, IV, V and VI, shall remain in full force and effect as modified herein.

(b) This Supplement VII, having been approved by the IUE Westinghouse Conference Board, shall become binding upon the parties upon its execution by representatives of the Company and of the Union.

APPENDIX

UNITS FOR WHICH THE UNION OR ITS LOCALS HAVE BEEN CERTIFIED ON THE DATE OF THIS AGREEMENT. AS USED HEREIN, THE TERM "UNION" MEANS THE INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-C.I.O. AND THE TERM "LOCAL" MEANS A LOCAL OF THE UNION.

ITEM 1

Location: BALTIMORE WORKS

BARGAINING REPRESENTATIVE:

Westinghouse Local 130

UNIT: All production and maintenance employees of the Employer at its Baltimore Works located at 2519 Wilkens Avenue and 3601 Washington Boulevard Baltimore, Maryland, including group leaders, and shop clerical employees, but excluding all salaried technical, office and office clerical employees, salaried time study clerks, clerical employees in the production planning department, guards, professional employees, and supervisors as defined in the Act.

ITEM 2

Location: BELLEVILLE WORKS

BARGAINING REPRESENTATIVE:

Westinghouse Local 410

UNIT: All production and maintenance employees of the Employer at its Belleville Works, 720 Washington Avenue, Belleville, New Jersey, including group leaders and truck drivers, but excluding all office and engineering employees, guards, professional employees, and supervisors as defined in the Act.

ITEM 3

Location: BLOOMFIELD WORKS

BARGAINING REPRESENTATIVE:

Westinghouse Local 410

UNIT: All production and maintenance employees of the Employer at its Bloomfield Works, McArthur Avenue, Bloomfield, New Jersey, including group leaders, but excluding all salaried engineers, technical and clerical employees, guards, professional employees, and supervisors as defined in the Act.

ITEM 4

Location: BLOOMFIELD WORKS

BARGAINING REPRESENTATIVE:

Westinghouse Local 412

UNIT: All salaried employees, including time and motion analysts III, at the Bloomfield Works of Westinghouse Electric Corporation, McArthur Avenue, Bloomfield, New Jersey, but excluding job analysts, patent attorneys, employment interviewers, secretaries, buyers, administrative staff assistants, the industrial relations assistant, employees in the Paymaster-Cashier's Office, employees in the Research Department classified as technician specialists, laboratory technicians, laboratory assistants or laboratory attendants, all engineers, assistant engineers, junior engineers, production specialists, test engineers, maintenance engineers, plant lay-out engineers, and methods engineers, and all other professional employees, guards, and supervisors as defined in the Act.

ITEM 5

Location: BRIDGEPORT, CONN., MANUFACTURING AND REPAIR PLANT

BARGAINING REPRESENTATIVE: IUE (AFL-CIO)

UNIT: All production and maintenance employees at the Company's manufacturing and repair plant

located at 540 Grant St., Bridgeport, Conn., Excluding executives, office and factory clerical employees, guards, professional employees and supervisors as defined in the Act.

ITEM 6

Location: BUFFALO WORKS
BARGAINING REPRESENTATIVE:
Westinghouse Local 1581

UNIT: All production and maintenance employees of the Employer at its Buffalo Works, 4454 Genesee Street, Buffalo, New York, including group leaders, powerhouse employees, and truck drivers, but excluding office, clerical and plant clerical employees regular welders and welder apprentices (excluding machine welders), guards, professional employees, and supervisors as defined in the Act.

ITEM 7

Location: BUFFALO DISTRICT WAREHOUSE
BARGAINING REPRESENTATIVE:
Local 315

UNIT: All hourly paid warehousemen in the Buffalo, New York, District Warehouse, of Westinghouse Electric Corporation excluding all office and clerical employees, other salaried employees, guards, professional employees and supervisors as defined in Section 2 (11) of the Act, as amended.

ITEM 8

Location: BUFFALO MANUFACTURING AND REPAIR PLANT
BARGAINING REPRESENTATIVE:
Westinghouse Local 315

UNIT: All production and maintenance employees of the Employer at its Buffalo Manufacturing and Repair Plant, 1132 Seneca Street, Buffalo, New York, including

group leaders and janitor-watchmen, but excluding salaried office and clerical employees, draftsmen, guards, professional employees, and supervisors as defined in the Act.

ITEM 9

Location: CLEVELAND PLANT

BARGAINING REPRESENTATIVE:

Westinghouse Local 777

UNIT: All production and maintenance employees of the Employer at its Cleveland Plant, 1216 West 58th Street, Cleveland, Ohio, including group leaders, powerhouse, salvage, stockroom, shipping, and toolroom employees, but excluding all office and clerical employees, wood and metal pattern makers and apprentices, polishers, buffers, spinners, platers and their helpers, maintenance electricians (including helpers and group leaders), guards, professional employees, and supervisors as defined in the Act.

ITEM 10

Location: CLEVELAND MANUFACTURING AND REPAIR PLANT

BARGAINING REPRESENTATIVE:

Westinghouse Local 777

UNIT: All production and maintenance employees of the Employer at its Cleveland Manufacturing and Repair Plant, 5901 Breakwater Avenue, Cleveland, Ohio, including group leaders, but excluding all clerical employees, guards, professional employees, and supervisors as defined in the Act.

ITEM 11

Location: COLUMBUS

BARGAINING REPRESENTATIVE:

IUE (AFL-CIO)

UNIT: All employees of the Employer at its Columbus, Ohio, Plant in the following groups: All produc-

tion employees, all toolroom (Tool Department) employees, and all maintenance employees, including the sone maintenance men but excluding all powerhouse employees; and excluding from each group all office and office clerical employees, professional employees, guards and all supervisors as defined in the Act.

ITEM 12

Location: EAST PITTSBURGH WORKS
BARGAINING REPRESENTATIVE:
Westinghouse Local 601

UNIT: All hourly rated employees of Westinghouse Electric Corporation, East Pittsburgh Works (including the Homewood Manufacturing and Repair Plant, and its plants in the boroughs of East Pittsburgh and Turtle Creek, Pennsylvania, its plants in Wilkins Township, Pennsylvania, and its plants at Trafford, Pennsylvania), including group leaders, and all telephone maintenance employees, but excluding all salaried employees other than salaried telephone maintenance employees, all wood and metal pattern makers, wood pattern repairmen and pattern maker apprentices, guards, professional employees and supervisors as defined in Section 2 (11) of the Act, as amended.

ITEM 13

Location: EAST SPRINGFIELD WORKS
BARGAINING REPRESENTATIVE:
Westinghouse Local 202

UNIT: All production and maintenance employees of the Employer at its East Springfield Works, 653 Page Boulevard, Springfield, Massachusetts, including group leaders, shop clerical employees, shipping and receiving clerks, tool and die makers, tool designers, test and inspection employees, repairmen, firemen and operating engineers, and truck drivers, all employees engaged

in the making, altering and repairing of patterns, but excluding all salaried office, clerical (other than shop clerical), technical, and engineering employees, manufacturing engineers, draftsmen, guards, professional employees, and supervisors as defined in the Act.

ITEM 14

Location: FAIRMONT GLASS PLANT

BARGAINING REPRESENTATIVE:

IUE-AFL-CIO

UNIT: All production and maintenance employees employed in the Glass Plant at Westinghouse Electric Corporation's Fairmont works on Hoult Road, Fairmont, West Virginia, including group leaders, but excluding office clerical employees, laboratory technicians, guards, professional employees and all supervisors as defined in the Act.

ITEM 15

Location: FAIRMONT LAMP WORKS

BARGAINING REPRESENTATIVE:

Westinghouse Local 627

UNIT: All production and maintenance employees of Westinghouse Electric Corporation, Fairmont Lamp Works, Hoult Road, Fairmont, West Virginia, including group leaders, and shipping and accounting clerks, but excluding all employees in the Glass Plant, office clerical employees, guards, professional employees, and supervisors as defined in the Act.

ITEM 16

Location: FAIRMONT MANUFACTURING AND REPAIR PLANT

BARGAINING REPRESENTATIVE:

Westinghouse Local 627

UNIT: All production, maintenance, and service employees of the Employer at its Fairmont Manufacturing and Repair Plant, Tenth and Beltline Streets, Fairmont.

West Virginia, including group leaders, truck drivers, shippers and receivers, and stock room workers, but excluding office employees, guards, professional employees, and supervisors as defined in the Act.

ITEM 17

Location: HUNTINGTON MANUFACTURING AND REPAIR PLANT

BARGAINING REPRESENTATIVE:

IUE-AFL-CIO Local 670

UNIT: All production and maintenance employees at the Huntington, West Virginia, Manufacturing and Repair plant, including group leaders and plant clerical employees, but excluding office clerical employees, sales office employees, professional and confidential employees, guards and supervisors.

ITEM 18

Location: HUNTINGTON SALES WAREHOUSE

BARGAINING REPRESENTATIVE:

IUE-AFL-CIO Local 670

UNIT: All employees at the Employer's Sales Warehouse located at 1029 7th Avenue, Huntington, West Virginia, but excluding salesmen, office clerical, professional and confidential employees, guards and supervisors.

ITEM 19

Location: INDIANAPOLIS MANUFACTURING AND REPAIR PLANT

BARGAINING REPRESENTATIVE:

IUE-AFL-CIO

UNIT: All production, maintenance, and repair employees of the Employer at its Indianapolis Manufacturing and Repair Plant, 551 West Merrill Street, Indianapolis, Indiana, including group leaders, but excluding office and clerical employees, timekeepers, time-study men, guards, professional employees, and supervisors as defined in the Act.

ITEM 20

Location: JERSEY CITY WORKS

BARGAINING REPRESENTATIVE:

Westinghouse Local 456

UNIT: All office, clerical, and technical employees of Westinghouse Electric Corporation, Jersey City Works, 150 Pacific Avenue, Jersey City, New Jersey, (including assistant buyers), and all junior engineers and methods engineers, but excluding all staff assistants to department managers or the general manager, buyers, confidential salary pay-roll clerks, paymasters, industrial relations employees; secretaries to company officers, managers and assistant managers, purchasing agents, superintendents, and factory accountants; the internal auditor, budget accountants, the audit clerk, and other professional employees, guards, and supervisors as defined in Section 2 (11) of the Act, as amended.

ITEM 21

Location: LIMA PLANT

BARGAINING REPRESENTATIVE:

Westinghouse Local 724

UNIT: All hourly paid production and maintenance employees, of Westinghouse Electric Corporation, Lima Plant, Shawnee Township, Allen County, Ohio, including group leaders, pay-card clerks and the shipping clerk, but excluding office, clerical, and salaried technical employees, shop production clerks, design engineers, tool engineers, draftsmen, time-study employees, guards, professional employees, and supervisors as defined in the Act.

ITEM 22

Location: LIMA PLANT

BARGAINING REPRESENTATIVE:

Westinghouse Local 760

UNIT: All shop production clerks, whether hourly paid or on salary, of Westinghouse Electric Corporation,

Lima Plant, Shawnee Township, Allen County, Ohio, excluding office clerks, guards, professional employees, and supervisors as defined in the Act.

ITEM 23

Location: LOS ANGELES (VERNON) LAMP WAREHOUSE

BARGAINING REPRESENTATIVE: IUE (AFL-CIO)

UNIT: All warehousemen of the Employer's Lamp Division, Vernon, California, excluding the warehouse leadman, all other employees, and supervisors as defined in the Act.

ITEM 24

Location: LOS ANGELES MANUFACTURING AND REPAIR PLANT

BARGAINING REPRESENTATIVE: IUE-AFL-CIO

UNIT: All production and maintenance employees employed by the Employer at the Los Angeles Manufacturing and Repair plant, 3383 East Gage Street, Huntington Park, California, including group leaders, but excluding office and clerical employees, salesmen, draftsmen, guards, professional employees and supervisors as defined in the Act.

ITEM 25

Location: MANOR WORKS

BARGAINING REPRESENTATIVE: Westinghouse Local 601

UNIT: All hourly paid production employees of the Employer at its Manor Works, Penn Township, Westmoreland County, Pennsylvania, including group leaders, but excluding all salaried employees, guards, professional employees, and supervisors as defined in the Act.

ITEM 26

Location: MANSFIELD WORKS

BARGAINING REPRESENTATIVE:

Westinghouse Local 711

UNIT: All production and maintenance employees of Westinghouse Electric Corporation, Mansfield Works, 246 East Fourth Street, Mansfield, Ohio, including group leaders, tool designers, and hourly paid production factory production clerks, but excluding all other clerical employees, design and technical engineers, draftsmen, time-study employees, guards, professional employees, and supervisors as defined in the Act.

ITEM 27

Location: MANSFIELD WORKS

BARGAINING REPRESENTATIVE:

Westinghouse Local 759

UNIT: All clerical employees of Westinghouse Electric Corporation, Mansfield Works, 246 East Fourth Street, Mansfield, Ohio, excluding all hourly paid factory production clerks, tool designers, engineers other than grades B and C industrial methods engineers, clerical staff specialists, instructors, nurses, resident inspectors, field production specialists, purchase expeditors, buyers, sales and advertising specialists, home economics employees, confidential employees, all employees in the Appliance Engineering, Refrigeration Cabinet Engineering, Industrial Heating Engineering, and Works Engineering Departments, guards, professional employees, and supervisors as defined in the Act.

ITEM 28

Location: METUCHEN PLANT

BARGAINING REPRESENTATIVE:

Westinghouse Local 401

UNIT: All hourly paid production and maintenance

employees of Westinghouse Electric Corporation, Metuchen, New Jersey, excluding all salaried employees, Powerhouse employes and guards, professional employees and supervisors.

ITEM 29

Location: METUCHEN PLANT

BARGAINING REPRESENTATIVE:

Westinghouse Local 491

UNIT: All salaried clerical and technical employees of Westinghouse Electric Corporation, Metuchen, New Jersey Plant, including assistant buyers, but excluding all Industrial Relations employees; secretaries to department heads; confidential salary payroll clerk; general payroll clerk; the paymaster-cashier; the internal auditor; budget accountants; buyers; outside expeditors; advertising assistants; sales assistants; rate and tariff analysts; renewal parts coordinators; all professional employees, design engineers, senior engineers, junior engineers, methods engineers, time and motion analysts, manufacturing engineers, nurses; doctors; guards; and supervisors, as defined in the Act.

ITEM 30

Location: NEWARK (N.J.) METER DIVISION

BARGAINING REPRESENTATIVE:

Westinghouse Local 426

UNIT: All production and maintenance employees of the Employer at its Newark Works at 95 Orange Street and 330 Orange Street, Newark, New Jersey, including group leaders, but excluding salaried clerical, technical and engineering employees, salaried inspectors, foremen's clerks, receiving clerks and storeroom clerks, guards, professional employees and supervisors as defined in the Act.

ITEM 31

Location: NEWARK (N.J.) METER DIVISION

BARGAINING REPRESENTATIVE:

Westinghouse Local 426

UNIT: All salaried employees employed at the 95 Orange Street, Plane Street and Raymond Boulevard, Newark, New Jersey, works of the Employer, including the telephone operators and the general duty clerks and the file clerks in the Industrial Relations Department, but excluding all other employees in the Industrial Relations Department, all employees in the Medical Department, staff assistants to department managers and the plant manager, the suggestion interviewer, secretaries, assistant secretaries to the manager of accounting, the buyer, the audit clerk A, manufacturing and general engineers, time and motion analysts, design, metallurgical and chemical engineers in the Engineering Department, sales engineers in the Sales Department, the test engineer in the Manufacturing Department, all draftsmen, tool designers, laboratory technicians, guards, professional employees and supervisors as defined in the Act.

ITEM 32

Location: NEWARK PLANT (NEWARK, OHIO)

BARGAINING REPRESENTATIVE:

Westinghouse Local 714

UNIT: All employees of Westinghouse Electric Corporation, Newark Plant, Newark, Ohio, excluding office and clerical employees, draftsmen, time study employees, watchmen, guards, design and technical engineers, all other professional employees, and all supervisors as defined in Section 2 (11) of the Act, as amended.

ITEM 33

Location: PHILADELPHIA MANUFACTURING AND REPAIR PLANT

BARGAINING REPRESENTATIVE: Westinghouse Local 111

UNIT: All hourly rated production and maintenance employees at the Employer's Philadelphia Manufacturing and Repair Plant, 3001 Walnut Street, Philadelphia, Pennsylvania, including group leaders, salaried inspectors, and production clerks B and C, but excluding production clerks A, telephone operators, guards, professional employees, and supervisors as defined in the Act.

ITEM 34

Location: SHARON WORKS

BARGAINING REPRESENTATIVE: Westinghouse Local 617

UNIT: All hourly paid production and maintenance employees of the Employer at its Sharon Works, 469 Sharpsville Avenue, Sharon, Pennsylvania, including group leaders, all salaried employees in the Tool Department, salaried inspectors, employees in the Production Department, and employees in the Stores and Shipping Department, but excluding all other office and clerical employees, laboratory technicians, employees in the Purchasing Department, time-study employees, guards, professional employees, and supervisors as defined in the Act.

ITEM 35

Location: SPRINGFIELD MANUFACTURING AND REPAIR PLANT

BARGAINING REPRESENTATIVE: IUE (AFL-CIO)

UNIT: All production and maintenance employees of the Westinghouse Electric Corporation at its manufacturing and repair plant located at 395 Liberty Street, Springfield 1, Mass., but excluding

office and factory clerical employees, guards, professional employees and supervisors as defined in the Act.

ITEM 36

Location: TRENTON WORKS

BARGAINING REPRESENTATIVE:

IUE (AFL-CIO)

Unit: All production, maintenance and warehouse employees of the Employer at its Trenton Works, 400 Pennington Avenue, Trenton, New Jersey, including group leaders, the lead wire clerks, and the coil clerk, but excluding all office clerical employees, technical employees, guards, professional employees, and supervisors as defined in the Act.

ITEM 37

Location: UNION CITY PLANT

BARGAINING REPRESENTATIVE:

Westinghouse Local 906

UNIT: All hourly paid production and maintenance employees of the employer's plant located at Union City, Indiana, but excluding all office clericals, all guards, professional employees, and supervisors as defined in the act.

APPENDIX B

APPENDIX B ATTACHED HERETO AND MADE A PART OF THE AGREEMENT DATED AS OF THE FIRST DAY OF OCTOBER, 1950, BETWEEN WESTINGHOUSE ELECTRIC CORPORATION AND INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO, AS AMENDED. DESCRIPTIONS OF THE BARGAINING UNITS REFERRED TO HEREIN WILL BE FOUND IN THE APPENDIX.

ITEM 2

Location: BELLEVILLE WORKS
BARGAINING REPRESENTATIVE: Local 410
Date of Certification: April 25, 1951
Case No. 2-UA-6423

ITEM 3

Location: BLOOMFIELD WORKS
BARGAINING REPRESENTATIVE: Local 410
Date of Certification: April 25, 1951
Case No. 2-UA-6424

ITEM 4

Location BLOOMFIELD WORKS
BARGAINING REPRESENTATIVE: Local 412
Effective date of Section VI-A: December, 1952

ITEM 6

Location: BUFFALO WORKS
BARGAINING REPRESENTATIVE: Local 1581
Effective Date of Section VI-A: January 7, 1952

ITEM 7

Location: BUFFALO DISTRICT WAREHOUSE
BARGAINING REPRESENTATIVE: Local 315
Date of Certification: June 1, 1951. Case 3-UA-1561

ITEM 8

Location: BUFFALO M. AND R. PLANT

BARGAINING REPRESENTATIVE: Local 315

Date of Certification: June 1, 1951. Case 3-UA-1562

ITEM 9

Location: CLEVELAND PLANT

BARGAINING REPRESENTATIVE: Local 777

Date of Certification: May 23, 1951. Case 8-UA-2345

ITEM 10

Location: CLEVELAND M. AND R. PLANT

BARGAINING REPRESENTATIVE: Local 777

Date of Certification: May 23, 1951. Case 8-UA-2344

ITEM 11

Location: COLUMBUS PLANT

BARGAINING REPRESENTATIVE: Local 746

Effective Date of Section VI-A: August 9, 1954

ITEM 12

Location: EAST PITTSBURGH WORKS

BARGAINING REPRESENTATIVE: Local 601

Effective Date of Section VI-A: April 23, 1953

ITEM 13

Location: EAST SPRINGFIELD WORKS

BARGAINING REPRESENTATIVE: Local 202

Date of Certification: June 18, 1951. Case 1-UA-3929

ITEM 15

Location: FAIRMONT LAMP WORKS

BARGAINING REPRESENTATIVE: Local 627

Date of Certification: April 9, 1951. Case 6-UA-1454

ITEM 16

Location: FAIRMONT M. AND R. PLANT

BARGAINING REPRESENTATIVE: Local 627

Date of Certification: April 9, 1951. Case 6-UA-1453

ITEM 20
Location: JERSEY CITY WORKS
BARGAINING REPRESENTATIVE: Local 456
Effective Date of Section VI-A: February 2, 1953

ITEM 21
Location: LIMA PLANT
BARGAINING REPRESENTATIVE: Local 724
Date of Certification: May 21, 1951. Case 8-UA-2312

ITEM 25
Location: MANOR WORKS
BARGAINING REPRESENTATIVE: Local 601
Effective Date of Section VI-A: April 23, 1953

ITEM 26
Location: MANSFIELD WORKS
BARGAINING REPRESENTATIVE: Local 711
Date of Certification: April 9, 1951. Case 8-UA-2283

ITEM 27
Location: MANSFIELD WORKS
BARGAINING REPRESENTATIVE: Local 759
Effective Date of Section VI-A: June 14, 1954

ITEM 28
Location: METUCHEN PLANT
BARGAINING REPRESENTATIVE: Local 401
Effective Date of Section VI-A: October 27, 1952

ITEM 29
Location: METUCHEN PLANT
BARGAINING REPRESENTATIVE: Local 491
Effective Date of Section VI-A: May 31, 1954

ITEM 32
Location: NEWARK PLANT (NEWARK, OHIO)
BARGAINING REPRESENTATIVE: Local 714
Date of Certification: March 7, 1951. Case 8-UA-2282

ITEM 33

Location: PHILADELPHIA M. AND R. PLANT

BARGAINING REPRESENTATIVE: Local 111

Date of Certification: March 5, 1951. Case 4-UA-2390

ITEM 34

Location: SHARON WORKS

BARGAINING REPRESENTATIVE: Local 617

Effective Date of Section VI-A: May 20, 1953

ITEM 37

Location: UNION CITY PLANT

BARGAINING REPRESENTATIVE: Local 906

Effective Date of Section VI-A: December 24, 1952

NOTES

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SUPREME COURT OF THE UNITED STATES

No. 485—October Term, 1962

JAMES B. CAREY, as President of the International Union of Electrical, Radio and Machine Workers, AFL-CIO, Petitioner,

vs.

WESTINGHOUSE ELECTRIC CORPORATION.

ORDER ALLOWING CERTIORARI—April 1, 1963

The petition herein for a writ of certiorari to the Court of Appeals of the State of New York is granted limited to Question 1 presented by the petition which reads as follows;

"Whether a state court is pre-empted of its jurisdiction to enforce arbitration provisions of a collective bargaining agreement by compelling arbitration of a grievance alleging that the employer violated the agreement by assigning work covered by the agreement to employees outside the collective bargaining unit and refusing to apply the terms and provisions of the agreement to the performance of such work."

The case is placed on the summary calendar. The Solicitor General is invited to file a brief, as *amicus curiae*, expressing the views of the United States.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Goldberg took no part in the consideration or decision of this petition.